

105c

THE
S P I R I T
OF THE

Bankrupt Laws.

Wherein are principally considered,

The **AUTHORITY** and **POWER**
of the **COMMISSIONERS**, in,

- | | |
|--|--|
| 1. Declaring the Party Bankrupt.
2. Seizing his Estate, and summoning him to surrender.
3. Receiving Proof of the Debts of his Creditors.
4. Appointing, chusing, and removing Assignees. | 5. Conveying and selling his Estate and Effects.
6. Examining and committing him, his Wife, and others.
7. Certifying his Conformity.
8. Dividing his Estate.
9. Ordering him his Allowance, and Overplus. |
|--|--|

These are fully discussed and explained, particularly the Power of the Commissioners to commit, from the Determinations of Lords *Hardwicke*, *Mansfield*, and of the present Judges.

With **Precedents** and **Instructions**.

To which is prefixed,

A **DISCOURSE** concerning the Appointment, Qualifications, Fees, Authority, Duty, Indemnity, &c. of Commissioners of Bankrupts.

128c

By **EDWARD GREEN**, Esq.

L O N D O N :

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T O T H E
R E A D E R.

S T O N E, a Serjeant (*a*) at Law, and Commissioner (*b*) of Bankrupts, famous for his Reading on (*c*) one of the Bankrupt Statutes, informs (*d*) us, “ that our fore-
 “ Ancestors, many (*e*) Years ago, so fa-
 “ voured Merchants, that for their Benefit
 “ a Law was made of Purpose, called *Sta-*
 “ *tutum* (*f*) *de Mercatoribus*; so as where at
 “ common Law, if a Debt were owing to a
 “ Man, he could not by Law recover this
 “ Debt without Process and Pleading, and
 “ yet then no Man’s Land were liable to the
 “ Judgments, by that Law (if once a Man
 “ acknowledged himself to be indebted to a

(*a*) He was called to this State and Degree, 19 May 1640. 16 Car. 1. *Dugd. Chron. Ser. III.*

(*b*) *Goodinge’s* Preface to his Law against Bankrupts.

(*c*) Stat. 13 Eliz. c. 7.

(*d*) In his “ *Oratio Lectoris* ” 2. 3.

(*e*) Near four hundred, viz. *Anno* 1285.

(*f*) 13 Edw. Stat. 3. c. 1.

“ Merchant, and paid not his Money at his
 “ Day) without Process, without Pleading,
 “ without further Suit or Judgment, the
 “ Merchant should have present Execution
 “ against his Debtor both for Body, Goods,
 “ and Lands.”

“ In those Days few *Englishmen* were Mer-
 “ chants, but Strangers brought their Com-
 “ modities hither, and fetched ours: but
 “ that Course was then clean altered, for
 “ very few came from foreign Nations to
 “ us; but we ourselves traded and trafficked
 “ with all Parts of the *habitable* World,
 “ Christendom, or Heathenish, and into
 “ many Parts *not inhabited* by any human
 “ Creature; as the Number of Merchants
 “ had encreased, so had *their Cunning and*
 “ *crafty Dealings*, insomuch it fell out, that
 “ we had *more Need to make Laws against*
 “ *them, than for them*; for it was found to
 “ be a Matter of more Difficulty for Men
 “ to get their Debts of Merchants, than it
 “ was in Times past for Merchants to get
 “ their Debts of other Men, *sed ex-malis*
 “ *Moribus bonæ Leges.*”

Mr. Serjeant (g) *Goodinge*, another Writer
 on the Bankrupt Laws, had “ often won-
 “ dered, that so little had been wrote on a
 “ Subject which made *so great a Figure*
 “ amongst Men of Business, as well at West-

(g) In his Preface.

“ *minster*

(b)

To the READER.

v

minster Hall, as upon the *Royal Exchange*;" he further adds, " that the Concerns of Bankrupts, which were theretofore almost wholly managed within the Precincts of our capital City, or famous Marts, were then descended into Country Towns and Villages; so that it was become a Matter of public and almost universal Consideration." If these were the Sentiments of a Lawyer in the Beginning of the Century, what would they have been, had he lived to this Time?

The satirical Advice given the *Roman People*, by that incomparable Poet *Juvenal*, seems so extremely applicable to a great Part of Mankind, at this Day engaged in commercial Affairs, that we cannot refrain inserting it in this Place: it is contained in those famous Lines in his first Satyr, so universally and so justly admired by the learned World:

*Aude (b) aliquid brevibus Gyaris, & Carcere dignum,
Si vis esse aliquis: PROBITAS laudatur, & alget.*

We offer you a Treatise on the Bankrupt Laws upon an entire new Plan, and with a different View to any hitherto published on the Subject, viz. " to point out and establish the Authority and Power of the Commissioners under those Laws."

(b) Juv. Sat. 1. Line 74. 75.

a 3

Our

Our Matter we chiefly extract from the Opinions and Determinations of Lord *Hardwicke*, late Lord Chancellor, Lord *Mansfield*, the now Chief Justice, and of the present Judges, on the most important and unsettled Points in the Bankrupt Laws, as also from the Writings of approved (*i*) Authors, who have accurately, faithfully, and judiciously reported them.

We have likewise inserted all the material *Preambles* to the Statutes concerning Bankrupts, in Deference to Sir *Edward Coke*, who “assures (*k*) us, that the Rehearsal or Preamble of a Statute is a good Means to “find out its Meaning, and as it were a “Key to open the Understanding thereof.”

Lord Chancellor (*l*) *Cooper* could by no Means allow of the Notion, that the Preamble should restrain the Operation of the enacting Clause; and that, because the Preamble was too narrow or defective, therefore the enacting Clause, which had general Words, should be restrained from its full Latitude, and from doing that Good which the Words would otherwise, and of themselves, import; which (with some Heat) his Lordship said was a ridiculous Notion; and instanced in the *Coventry* (*m*) Act, which, if

(*i*) Mr. Baron *Atkins*, and Master *Burrows*.

(*k*) *Co. Lit.* 79. a.

(*l*) *Wil. Rep.* 320.

(*m*) Stat. 22 & 23 Car. 2. c. 1:

it had recited the Barbarity of cutting *Conventry's* Nose, and the enacting Clause had been general, viz. against the cutting of *any Member* whereby the Man is disfigured or defaced, it might with equal Reason be objected, that cutting of the Lips, or putting out the Eye, would not have been within the Act, because not within the Preamble.

However Lord (n) *Hardwicke*, and the present Lord Chief (o) Baron of the *Exchequer*, both inclined to be of Opinion, that the enacting Clause was to be restrained by the Preamble, and though they had great Honor for Lord *Cooper*, could not subscribe to his Reasons, that the Preamble should not govern the enacting Clause.

In treating this Subject, we are conscious of no Design to mislead you; we have asserted Nothing without giving good Authority; we generally quote the very Words of the Authors, and leave you to form your own Judgment; if we differ from any Writer on the Subject, we constantly submit our Reasons to the judicious Reader, which are generally founded on Inferences drawn from the Statutes or Determinations; this we conceive to be the surest Method to be right in our Conclusions. Our Reasons we hope are given with due Deference to the Profession,

(n) *Atk. Rep.* 182.

(o) *Atk. Rep.* 175.

especially to that Part of them who have the Honor of being in the Commission of Bankrupt; and also with that Temper and good Manners, which every Reader has a Right to expect. In the Course of our Notes and Observations, it is scarce possible when we have Conviction on our Side, to remain altogether unconcerned; if therefore, in some Passages, we should have exceeded Moderation, we did not mean to offend, and hope that we shall not often stand in Need of an Indulgence on that Account.

Easter Vacation,

1767.

A

PREFATORY DISCOURSE

CONCERNING

The Appointment, Qualifications, Fees,
Authority, Duty, Indemnity, &c.
of Commissioners of Bankrupts.

*"It is a Shame for "an Orator of
"Causes," to be ignorant of that Law
"in which he is so peculiarly con-
"cerned."* "BLACKSTONE."

AS there are several Matters which concern Commissioners of Bankrupts in general, we thought they could not be more properly considered than at the Head of the Work; this therefore we will do under the following Particulars, viz.

1. *Their Appointment and Qualifications.*
2. *Their Authority.*
3. *The Construction of the Bankrupt Statutes; and*
4. *How they are liable and indemnified; and*

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1. *The Appointment and Qualifications of the Commissioners.*

The Commissioners are verbally appointed by the Great Seal in Pursuance of an (p) Act of Parliament, which (q) authorizes the Lord Chancellor, &c. to assign by Commission, wise, honest, and discreet Persons; it is observable that my Lord *Hardwicke* was of Opinion, according to Mr. Baron (r) *Atkins*, that an Office *quam diu se bene gesserit* had always (s) been held to have been an Office for Life.

Sir *Edward* (t) *Coke* says, that the Observance of the three Qualities, Wisdom, Honesty and (u) Discretion, are the best

(p) Stat. 13 *Eliz.* c. 7. S. 2.

(q) See *Bulstr.* 236.

(r) *Atk. Rep.* 213.

(s) If so, would there have been Occasion for an Act of Parliament to continue Judges in the Enjoyment of their Offices *during their good Behaviour*, notwithstanding any Demise of the Crown? Stat. 1 *Geo.* 3. c. 23. or would L. C. J. *Holt* held his Office determinable by the Demise of the Crown? 2 *Lord Raym.* 747. *Fortesc.* Rep. 389. Cr. Car. 1. 2. As Commissioners of Bankrupts are appointed only *durante bene placito*, this may be thought a Digression.

(t) 4 *Inst.* 278.

(u) Discretion is a Knowledge or Understanding to distinguish between Falsity and Truth, between Wrong and Right, between Shadow and Substance, between Equity and colourable Glosses; and not to act according to one's own Will and private Affection; for as one has it, *talis Discretio Discretionem confundit.* 5 *Rep.* 100. The Judges of the Common Law have

Means

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Means for the Execution of the Bankrupt Statutes, the Life of which consists in the due Execution of them, and (w) that every Commissioner ought to have *duos Sales*, viz. *Salem Sapientiæ, ne sit insipidus*, and *Salem Conscientiæ, ne sit Diabolus*; that is, two Grains, viz. a Grain of Knowledge to prevent his acting like a Fool, and a Grain of Conscience, to prevent his acting like a Devil.

The (x) Legislature has enjoined the Commissioners by an (y) Engagement under the highest of all Sanctions, "faith-

interpreted *Wisdom and Discretion* to be a legal *Wisdom and Discretion*. 10 Rep. 140. 4 Mod. Rep. 115. Sir Edward Coke also says, that Discretion only we allow of in this Place, which either grave and reverend Men have used in such Cases before, or rises out of the Circumstances of the Matter. *Co. Lit.* 62. 2. for as by the Authority of Littleton, *Discretio est discernere per Legem, quid sit justum*, that is, to discern by the right Line of the Law, and not by the crooked Cord of private Opinion, which the vulgar call Discretion, *Co. Lit.* 227. b. 10 Rep. 140. 2 *Bulstr.* 197. 198. *Hob.* 158. This is proved by the Common Law in the Case of a special Verdict, *et super totam Materiam petunt Discretionem Justiciariorum*; i. e. they desire the Judges will discern by Law what is just, and so give Judgment accordingly. 4 *Inst.* 41. *Fortesc.* Rep. 393. *Si a Jure decedas, vagus eris, et erunt omnia omnibus incerta*; and therefore Commissions which authorize any to proceed, *secundum sanas Discretionem vestras*, is as much as to say, *secundum Legem & Consuetudinem Angliæ*. *Co. Lit.* 227. b. 10 *Co.* 138.

(w) 10 Rep. 140.

(x) Stat. 5 Geo. 2. c. 30. S. 43.

(y) *Fost. Cr. Law.* 189.

iv PREFATORY DISCOURSE.

“fully, impartially and honestly, according to the best of their Skill and Knowledge, to execute the several Powers and Trusts reposed in them, and that without Favor or Affection, Prejudice or Malice.”

The same (z) Authority hath further enjoined the Commissioners upon Pain of being (a) disabled to act, not to eat or drink

(z) Stat. 5 Geo. 2. c. 30. S. 42.

(a) On Petition against several of the Commissioners for taking more than 20s a piece at each Meeting, and likewise ordering great Sums of Money to be charged for their eating and Drinking, Lord Chancellor *Hardwicke* declared them incapable, by Virtue of the above Act, to act any longer as Commissioners in the Execution of the Commission, and that no further Proceedings ought to be had thereon; and also that all further Proceedings on the Commission should be absolutely stayed; and that the Petitioners should be at Liberty to apply to his Lordship by Petition, to have the said Commission renewed, and directed to such new Commissioners to be named therein as he should think fit, and for that Purpose did order, that the Solicitor for the Petitioners should leave with his Secretary to the Commissioners of Bankrupts, the Names of five Persons whom they should propose for his Lordship's Consideration, in order that proper Persons might be appointed Commissioners in such renewed Commission; and that the old Commissioners [2. Eq. Cas. Abr. 99.] petitioned against should, out of their own Pockets, pay the Costs of the Petitioner's Application, and the Costs of renewing the said Commission, to be taxed by the Master, in Case the Parties should differ about the same. 7 Vin. Abr. 77. pl. 3. 2 Eq. Cas. Abr. 98. pl. 7.

at

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at the Charge of the Creditors, or of the Bankrupt's Estate; or presume to take above twenty Shillings each Commissioner, for each (b) Sitting.

Previous to this Statute, Lord (c) *Jeffries*, declared himself no Friend to Commissions of Bankrupt, they occasioning much Hurt, and instanced in a Case before him, where the Charge and Expences of the Commissioners and their Attendants came to 400*l*. and the Distribution to the Creditors seven Shillings in the Pound. This Inconvenience, observed by Lord *Jeffries* so many Years ago, is felt even at this Day in Country Commissions, for it is held that the above Statute does not extend to them.

2. *The Authority of the Commissioners, and herein of Adjournment.*

After a Commission hath been dealt (d) in, they may proceed in the Execution thereof, notwithstanding the (e) Death of

(b) Doctor *Blackstone* seems mistaken in saying 20*s* *per Diem* each, at every Sitting. 2. *Black. Com.* 480. for the Words *per Diem* are not in the Statute; and it is not to be presumed the Legislature intended the Commissioners should sit from Morning till Night for 20*s*.

(c) 2 *Chanc. Cas.* 192.

(d) Stat. 1 Jac. c. 15. S. 17.

(e) But if nothing was done before he die, all is avoided. *Vern.* 153. 2 *Chanc. Cas.* 192.

the

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the (*) Bankrupt, in the same Manner as if he were living. Lord Chancellor (f) *Talbot* was of Opinion that declaring Party Bankrupt at three o'Clock in the Afternoon, and executing an Assignment at six on a Commission issued at eleven o'Clock in the Morning of the same Day was a (g) Dealing within the Act, and that the Proceedings should stand, though the Commissioners had Notice that the Bankrupt died at one o'Clock in the Afternoon of that Day; and his Lordship said he knew no particular Act as distinct from another which could be called a *Dealing*: it had been said, that the Declaration of Bankruptcy was the Act meant, but that being only discretionary and for Caution, and not at all binding to any Body, it was not probable that the Statute should intend that only a Dealing, which it had not any where given the Commissioners a Power to do.

Lord *Hardwicke* often (h) observed that a Commission of Bankrupt was a Judg-

(*). Or of the King. Stat. 5 Geo. 2. c. 30. S. 45.

(f) *Cas. Temp. Talb.* 184.

(g) Whatever is done in Pursuance of the Commission, though never so minute, is a Dealing in it, [see 2 Chanc. *Cas.* 192. 193.] and he said he could not therefore put a narrow constrained Construction upon the Words "*dealt in*," in order to overthrow the Commission, and all the just Right of the Creditors claiming under it. *Cas. Temp. Talb.* 186.

(h) *Atk. Rep.* 67. pl. 22. id. p. 104. 152.

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ment and an Execution in the first Instance ; and we may add, that it is an Execution of the highest Nature, for it includes all the Executions at Common Law and more ; as a *Fi. Fa.* it takes Possession of all the Bankrupts Goods and Chattels ; as an *Elegit* it seizes all his Lands, and as a *Ca. Sa.* it imprisons (*i*) his Person ; and besides subjects the Party to a Forfeiture (*k*) of his Life in Case he conceals any Part of his Estate real or personal, to the Amount of 20*l.* or upwards.

We therefore most earnestly and most seriously recommend it to the Commissioners never to find any Person Bankrupt but upon a plain and express Act of Bankruptcy committed ; and we think ourselves extreamly happy in being able to enforce this Recommendation, not only from the Justice of it, but also from the Authority of Lord (*l*) *Hardwicke* himself ; who has also (*m*) declared, that the Commissioners are not bound implicitly to receive Evidence, merely because it is upon *Oath*, and therefore may even then reject it if they have any Reason to doubt of the Veracity of it ; the Court of *King's* (*n*) *Bench* also declared,

(*i*) Stat. 5 Geo. 2. c. 30. S. 14.

(*k*) See 10 Mod. 246.

(*l*) *Atk. Rep.* 139. pl. 80.

(*m*) *Atk. Rep.* 71.

(*n*) 2 *Bur. Rep.* 1216.

that

viii: PREFATORY DISCOURSE.

that the Commissioners were not obliged to receive for true whatever the Bankrupt should please to swear at his final Examination:

The Authority of the Commissioners to adjourn has been much doubted, but never we believe hitherto judicially disputed: it seems however very certain that (o) three at least must be present in order to adjourn, because fewer cannot do any Act whatever. The Doubts have arose. 1. *At the Choice of Assignees.* 2. *On the Bankrupt's last Examination;* and 3. *On making a Dividend;* in this Order therefore we will consider them.

As to the first, it may happen that no Creditor who has proved a Debt to the Amount of 10*l.* or upwards, under the Commission, appears at the Day appointed by the Commissioners for the Choice of Assignees, and if so, it seems absolutely necessary for the Commissioners to have Authority in such Case to adjourn the Choice to a further Day; and which we apprehend they may do too, without endeavouring to make the Adjournment the joint Act of themselves and of the Creditors, by adding in the *Memorandum* of the Adjournment, *that it was made by the Consent and at the*

(o) But it seems that the *three last* Commissioners of the List cannot sit together, because the Commission of Bankrupt has appointed neither of them of the *Quorum*.

Request

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Request of the Creditors then present; now it seems there is no Occasion, and it is certain, the Commissioners have no *Authority*, to tack the above at the End of the *Memo-randum*.

As to the second; my Lord (p) *Mansfield* having declared that the "*Power* of the "*Commissioners to examine the Bankrupt is not limited and confined within the Time* "*allowed him to submit to be examined;* "*but that they may compel him to make* "*further Answer after that Time;*" his Lordship seems to imply an Authority in them to adjourn, at least to finish such Examination; and the Commissioners may perhaps be of Opinion (and not without Reason) that this solemn Determination of the Chief Justice authorizes them to adjourn at Discretion, *toties quoties*.

And as to the third; there are often so many Debts to be proved on the Day advertised for making a Dividend, that it is impossible to do it at the Time appointed, without excluding some of the Creditors from the Benefit of the Dividend, or putting them to the Charge of petitioning the Great Seal to be admitted, than to suffer which, we think it would be much more *equitable* in the Commissioners to adjourn.

When the Commissioners have assigned the Bankrupt's Estate, and given him his

(p) 2 *Bur. Rep.* 1124. 1125.

Certificate.

x PREFATORY DISCOURSE.

(q) Certificate and Discharge, they have (r) executed their Authority.

3. *The Construction of the Bankrupt Statutes.*

The Courts of Justice have declared that all the Statutes concerning Bankrupts are to be (s) construed according to their real Intention; that they are to be taken together, so as to answer the great general End of the (t) Legislature, as making one (u) System of Law; that they are to be construed by (w) Equity, for the Relief of

(q) But if the Bankrupt hath not obtained his Certificate, and after the Commission awarded, and Distribution made of all the Bankrupt's Estate towards Satisfaction of the Creditors; Lands, Goods, &c. descend or come to the Bankrupt, they shall be subject to a new Sale and Distribution, for the Commissioners *Authority is not fully executed until the Creditors be satisfied: Billing. 118. Stone 132. pl. 19. contra.*

(r) *Wil. Rep. 385.*

(s) *Bur. Rep. 439. 440.*

(t) So said by Mr. Justice (now Lord Chief Justice) *Wilmot. 2 Bur. Rep. 1124. See Bur. Rep. 447.*

(u) *Ventr. 244. 2 Eq. Cas. abr. 120. 4 Bac. Abr. 647. 7 Vin. Abr. 123.*

(w) *2 Show. Rep. 519. 520. 2 Eq. Cas. abr. 97. Cas. Temp. Talb. 185. Stat. 21 Jac. c. 19. S. 1. Mar. 36. Atk. Rep. 177. 183. being made for the Suppression of Fraud; and yet this should not be too far extended, for the Statutes are very penal, and my Lord Bacon's Remark is good, which is, that it is an hard Case to torture Laws, that they may torture Men. See Lord Bacon's Works, 520. in 4to.*

Creditors,

PREFATORY DISCOURSE. xi

(x) Creditors, they being undoubtedly remedial Laws, are to be extended by Equity, and not restrained as penal Laws; and that if any Construction can be made more beneficial for the Creditors one than another, the Court admits that Construction as founded on the best of Rules, viz. "*suum cui-que tribuere*," of giving to every Man his own: and that upon this Foundation stand all the Laws against Bankrupts, which are also to be construed so as to suppress (y) Fraud.

4. *How the Commissioners are liable and indemnified.*

The Courts of Justice have also resolved that (z) as the Commission and Authority is by Force of the several Acts of Parliament, which (a) ought to be pursued; if the Commissioners find a Person Bankrupt who is not so, they are subject to the (b)

(x) The Creditor's Good is the proper End of suing out Commissions of Bankrupt. 2 Eq. Cas. abr. 121.

(y) *Bur. Rep.* 474.

(z) 4 Inst. 277. 8 Rep. 121. 4 Mod. 116. T. Raym. 337.

(a) 2 Show. Rep. 156. pl. 142. Com. Rep. 80.

(b) So said by Lord Chancellor *King*. Sel. Cas. in Chanc. 47. But if in the Proceedings the Commissioners commit some Mistake, which appears to be only an Error of their Judgment, they shall not be liable to an Action; by Lord Chief Justice *Holt*. Comb. 391.

Action.

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Action of the Party grieved, for he has no other Remedy; but they may plead (c) generally, and are not driven to any special Pleading.

Lord Keeper *Jeffries* said, it was a Mischief, that the Act of Parliament had subjected the Commissioners to an Action, for that no sufficient Persons, and such as were fit to manage such a Concern, would undertake the Trouble of it. *Vern.* 154.

(c) 4 Inst. 278. By Stat. 1 Jac. c. 15. S. 16. quere 21 Jac. c. 19. The Commissioners may plead *Not Guilty*, or justify by Stat. 13 Eliz. c. 7, & 1 Jac. c. 15. But there is no Provision for any Thing done by them on any of the subsequent Statutes.

Bankrupt

Bankrupt Acts cited.

- 13 El. c. 7. Intituled, "An Act touching Orders for Bankrupts."
- 1 Jac. c. 15. "An Act for the better Relief of the Creditors against such as shall become Bankrupts."
- 21 Jac. c. 19. "An Act for the further Description of a Bankrupt, and Relief of Creditors against such as shall become Bankrupts, and for inflicting corporal Punishment upon the Bankrupt in some special Cases."
- 7 An. c. 12. "An Act for preserving the Privileges of Ambassadors, and other Publick Ministers of Foreign Princes and States."
- 10 An. c. 15.
- 7 Geo. c. 31. "An Act for explaining and making more effectual the several Acts concerning Bankrupts."
- 5 Geo. 2. c. 30. "An Act to prevent the committing of Frauds by Bankrupts."
- 19 Geo. 2. c. 32. "An Act for amending the Laws relating to Bankrupts."
- 24 Geo. 2. c. 57. "An Act (*inter alia*) to make some further Provisions in Relation to the signing of Certificates for the Discharge of Bankrupts."
- 31 Geo. 2. c. 35. "An Act (*inter alia*) for the preventing the committing of Frauds by Bankrupts."
- 4 Geo. 3. c. 33. "An Act for preventing Inconveniences arising in Cases of Merchants and such other Persons as are, within the Description of the Statutes relating to Bankrupts, being intitled to Privilege of Parliament and becoming insolvent."

Manuscript

Manuscript Cases.

	B.			
<i>Bromley v Munde.</i>	—		Fol. 43.	221.
	D.			
<i>Degols v Ward.</i>	—	—		41.
	E.			
<i>Evans v Gold.</i>	—	—		70.
	F.			
<i>Field v Bellamy.</i>	—	—	43.	221.
	I.			
<i>Jackson v Nightingale.</i>	—	—		42.
	M.			
<i>Mills v Hughs.</i>	—	—		27.
	P.			
<i>Philips and Peck v Sheriff of Essex.</i>				50.
	T.			
<i>Tribe v Webber.</i>	—	—	—	62.
	W.			
<i>Woodier's Case.</i>	—	—	—	40.

Some

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Some Abbreviations explained.

1.	A.	Baron <i>Atkyns's</i> Reports in Chancery, Folio.
	B.	<i>Beawes's Lex mercatoria rediviva</i> , Folio.
1.		Doctor <i>Blackstone's</i> Commentaries on the Laws of England. 2 vols. Quarto.
70.	C.	Master <i>Burrow's</i> Reports in the <i>King's Bench</i> , 2 vols. Folio.
		Cases and Resolutions concerning Settlements and Removals. 8vo.
21.	F.	Lord Chief Baron <i>Comyns's</i> Digest on the Laws of England. 5 vol. Folio.
		This means the Folios of this Work, viz. "The Spirit of the Bankrupt Laws."
42.	K.	Mr. Justice <i>Kelynge's</i> Reports in the <i>King's Bench</i> , &c. Folio.
	M.	<i>Farresley's</i> Reports. Folio.
		Modern Cases in Law and Equity, Folio.
27.		<i>Lucas's</i> Cases in Law and Equity, Folio.
		Report of Cases in Queen <i>Anne's</i> Time. Folio.
50.	R.	Cases in the <i>King's Bench</i> , in <i>William</i> the third's Time. Folio.
	S.	Readings on the Statute Law, 5 vols. Octavo.
62.		<i>Strange's</i> Select Cases of Evidence, Octavo.
		Sessions Cases. 2 vol. Octavo.

(a) All Extracts from this Book, are the Determinations of the late Lord Chancellor *Hardwicke*, unless otherwise expressed.

(b) All Extracts from this Book, are the Determinations of Lord *Mansfield*, the present Chief Justice of the *King's Bench*, unless otherwise expressed.

(c) This Book was suppressed soon after Publication, by Reason of its having been obtained surreptitiously.

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THE

THE
SPIRIT
OF THE
Bankrupt Laws.

INTRODUCTION.

A Bankrupt is defined to be “ a Trader, who secretes himself, or does certain other Acts, tending to defraud his Creditors (*a*);” he was formerly considered merely in the Light of a Criminal or Offender (*b*), and in this Spirit we are told by Sir *Edward* (*c*) *Coke*, that we have fetched as well the (*d*) Name,

(*a*) 2 *Black. Com.* 285. 471.

(*b*) Stat. 1 Jac. c. 15. S. 17. 2 *Show. Rep.* 516, 517. *Atk. Rep.* 77, id. 219. pl. 120. id. 242. 2 *Bur. Rep.* 717.

(*c*) 4 *Inst* 277.

(*d*) The Word itself is derived from *Bancus* or *Banque*, which signifies the Table or Counter of a Tradesman. (*Dufresne* I. 969.) and *ruptus*, broken; denoting thereby one whose Shop or Place of Trade is broken and gone; though others rather chuse to

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as the Wickedness of Bankrupts from foreign Nations; but at present the Laws of Bankruptcy are considered as Laws calculated for the benefit of Trade, and founded on the Principles of Humanity as well as Justice; and to that End they confer some Privileges, not only on the Creditors, but also on the Bankrupt or Debtor himself. On the Creditors; by compelling the Bankrupt to give up all his Effects to their Use, without any fraudulent Concealment: on the Debtor; by exempting him from the Rigor of the general Law, whereby his Person might be confined at the Discretion of his Creditor, though in Reality he has Nothing to satisfy the Debt; whereas the Law of Bankrupts, taking into Consideration the sudden and unavoidable Accidents to which Men in *Trade* are liable, has given them the Liberty of their Persons, and some pecuniary Emoluments, upon Condition they surrender up their whole Estate to be divided among their Creditors (e). But still

adopt the Word *Route*, which in *French* signifies a Trace or Track, and tell us that a Bankrupt is one who hath removed his *Banque*, leaving but a Trace behind. (4 Inst. 277.) And it is observable that the Title of the first *English* Statute concerning this Offence, 34 Hen. VIII. c. 4. against such Persons as do make *Bankrupt*, is a literal Translation of the *French* idiom, *qui font banque route*. Cowel. Verb. "*Bankrupt*."

(e) 2 Black. Com. 472.

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INTRODUCTION. iii

it is cautious of encouraging Prodigality and Extravagance by this Indulgence to Debtors; and therefore it allows the Benefit of the Laws of Bankruptcy to none but actual *Traders*; since that set of Men are, generally speaking, the only Persons liable to accidental Losses, and to an Inability of paying their Debts, without any Fault of their own. If Persons in other Situations of Life run in Debt without the Power of Payment, they must take the Consequences of their own Indiscretion, even though they meet with sudden Accidents that may reduce their Fortunes: for the Law holds it to be an unjustifiable Practice, for any Person but a Tradesman to incumber himself with Debts of any considerable Value. If a Gentleman, or one in a liberal Profession, at the time of contracting his Debts, has a sufficient Fund to pay them, the Delay of Payment is a Species of Dishonesty, and a temporary Injustice to his Creditor; and if, at such Time, he has no sufficient Fund, the Dishonesty and Injustice is the greater. He cannot therefore murmur, if he suffers the Punishment which he has voluntarily drawn upon himself. But in mercantile Transactions the Case is far otherwise. Trade cannot be carried on without mutual Credit on both Sides: the contracting of Debts is therefore here not only justifiable, but necessary. And if by
accidental

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accidental Calamities, as by the Loss of a Ship in a Tempest, the Failure of Brother Traders, or by the Nonpayment of Persons out of Trade, a Merchant or Tradesman becomes incapable of discharging his own Debts, it is his Misfortune and not his Fault. To the Misfortune therefore of Debtors the Law has given a compassionate Remedy, but denied it to their Faults: since, at the same Time that it provides for the Security of Commerce, by enacting that every considerable Trader may be declared Bankrupt, for the Benefit of his Creditors as well as himself, it has also to discourage Extravagance, declared, that no one shall be capable of being made Bankrupt, but only a Trader; nor capable of receiving the full Benefit of the Statutes, but only an industrious Trader (*f*).

As the Spirit of the Bankrupt Laws consists in the Power and Authority they give the Commissioners, the following Sheets were compiled principally with a View to point out and establish that Power and Authority, for which Purpose we shall consider the following Particulars, viz.

(*f*) 2 Black. Com. 473, 474.

INTRODUCTION. v

C H A P. I.

The Declaration of the Bankruptcy.

C H A P. II.

The Seizure of the Bankrupt's Estate, and Summons for his Surrender.

C H A P. III.

The Proof of his Debts.

C H A P. IV.

The Appointment, Choice, and Removal of the Assignees.

C H A P. V.

The Conveyance and Sale of his Estate and Effects.

C H A P. VI.

His Examination and Commitment, and of his Wife, and others.

C H A P. VII.

His Certificate.

C H A P. VIII.

The Dividend.

C H A P. IX.

The Bankrupt's Allowance.

C H A P I.

The Power and Authority of the Commissioners in (g) declaring the Party Bankrupt.

IN Order to constitute a legal (for there is no such Thing as an (b) equitable) Bankruptcy, the Party must *have (i) been*

(g) Lord Ch. Just. *Holt* said, that *formerly* the Time was mentioned when the Party became Bankrupt, but it is omitted *now*, and that is the wiser Course, Lord *Raym.* 100. and Lord *Hardwicke* said, that to prevent Disputes about the Time when the Party became Bankrupt, the Commissioners always find in general, that he was Bankrupt at the Time the Commission issued. *Atk. Rep.* 78. 119. *Temp. Cas. Talb.* 243, 244. Lord *Hardwicke* said, that where there was a joint Commission against two Partners, they must be each found Bankrupt, and though one of them should die, the Commission might still go on, but if one of the joint Traders be dead at the Time of taking out the Commission, it abated and was absolutely void. *Atk. Rep.* 97. pl. 45.

(b) 2 *Wil. Rep.* 429.

(i) *Though* the Party has *left off* his Trade for some Time, yet if he absconds, &c. for Debts contracted during his Trade, he is still liable to the Bankrupt Laws. *Sid.* 411. pl. 7. *Lev. Rep.* 17. 3 *Keb. Rep.* 451. pl. 16. So he is for Debts contracted in his Trade, tho' newly secured after his leaving off his Trade. *Com. Dig.* 521. or if he leaves off his Trade, but puts his Stock into the Hands of another with whom he is Partner in Gain and Loss. *Palm.* 325. *Bur. Rep.* 6. 8. or if he has Effects of his Trade in his Hands, and upon Credit a Trader,

a Trader, he must have committed some Act of Bankruptcy, and he must be *sufficiently* indebted: hence arise other Particulars to be discussed, which we will consider in the Order they occur, viz.

1. Trading.
2. Acts of Bankruptcy.
3. Petitioning Creditor's Debt.

1. Trading.

The several Bankrupt Statutes have expressly declared, or the Resolutions of the Courts of Justice in their Interpretations of them have determined, who are such Traders against whom a Commission of Bankrupt may issue.

We will therefore, for the Sake of Method and Perspicuity, consider this Head under the two following Subdivisions, viz.

1. *What Kind and Degree of Trading makes the Party an Object of the Bankrupt Laws.*
2. *What Kind and Degree of Trading does not, and*

of them contracts Debts, though he does not buy any more Goods. *Ventr.* 166. or if he becomes Security for another, because he is trusted upon the Reputation of his Stock and Dealings, as well where he is Security, as where he contracts for his own Debts. *Palm.* 325. By the above Cases it seems clear that a *Trader indebted* is liable to the Bankrupt Laws, though he has quitted Trade, if not above six Years, till he has discharged his former Debts.

1. *What*

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1. *What Kind and Degree of Trading does.*

Any (*k*) Merchant or other Person, using the Trade of Merchandize, by Way of Bargaining, (*l*) Exchange, Rechange, Bartry, (*m*) Chevifanse, or otherwise in Grofs or Retail, or seeking his Trade of Living by buying and selling, being a natural born Subject, or an (*n*) *Alien*, or being *Denizen*, may be (*o*) Bankrupt.

Whereas Persons dealing as (*p*) Bankers,

(*k*) Every one *Man* or *Woman*, who gets *his* or *her* Living by buying and selling, by Trade or Merchandize, may come under the Denomination of a Bankrupt, upon *his* or *her* failing in the World. *Cr. Car.* 549. *W. Jo.* 437. pl. 3. *Mar.* 34. pl. 67.

(*l*) Drawing and re-drawing Bills of Exchange for large Sums of Money, and a Continuation of it, is a trafficking in *Exchange*, and a Trading which will make a Man liable to a Commission of Bankrupt, though no Commission Money allowed, and notwithstanding a Loss ensued thereby to the Bankrupt. By Lord *Hardwicke. Atk. Rep.* 128. pl. 72.

(*m*) That is, making Contracts. 2 *Dufresne* 569.

(*n*) The Benefits as well as the penal Parts of the Bankrupt Laws, are extended as well to *Aliens* and *Denizens*, as to natural-born Subjects; being intended entirely for the Protection of Frauds, in which *Aliens* are often as deeply concerned as Natives. 2 *Black. Com.* 474. 475.

(*o*) Stat. 13 El. c. 7. S. 1. 21 Jac. c. 19. S. 2.

(*p*) Bankers having taken upon them to act as *Scriveners*, made it necessary for the Legislature to add *Bankers*, as being liable to Commissions of Bankrupt; and Persons acting as Bankers will be considered as such, though they do not keep open Shops. By Lord *Hardwicke. Atk. Rep.* 218. pl. 119.

Brokers,

(*q*) Brokers, and Factors, are frequently intrusted with great Sums of Money, and with Goods and Effects of very great Value belonging to other Persons, such Bankers, &c. are declared liable to the Statutes concerning Bankrupts (*r*).

Though the Trade be a very inferior one, yet if the Party gets his Living thereby, it will be a sufficient (*s*) Trading to make him Bankrupt; as (*t*) Carpenters, (*u*) Cowkeepers; (*w*) Dyers; (*x*) Victuallers; (*y*) Vintners.

Though the Party does not sell the same Wares which he buys, but converts them to saleable Commodities, and then sells (*z*)

(*q*) Lord Chancellor *Hardwicke* inclined to think a *Pawnbroker* within the several Statutes concerning Bankrupts, and especially within the general Words of the above Clause; for though *Pawnbrokers* are not expressly named, yet the general Word "*Brokers*" is the *Genus*, and all other Kind of *Brokerage* the *Species*. *Atk. Rep.* 206. pl. 109.

(*r*) Stat. 5 Geo. 2. c. 30. §. 39. continued to September 1771. by Stat. 4 Geo. 3. c. 36.

(*s*) *Com. Dig.* 521.

(*t*) 3 Mod. Rep. 155. or Ship-Carpenters. Lord *Raym.* 741. but it seems otherwise of a mere working Carpenter. 3 Mod. Rep. 155.

(*u*) *Goodinge.* 13.

(*w*) Cr. Jac. 585. pl. 6. See *Gilb. Cas.* 116. 10 Mod. 196.

(*x*) Lord *Raym.* 287. 12 Mod. 159.

(*y*) Read. Stat. Law. 186.

(*z*) *Com. Dig.* 521.

them;

them; as (a) Bakers, (b) Brewers (c) Clothiers, who buy Wool, and convert it to Cloths; (d) Goldsmiths, (e) Ironmongers, who buy rod or bar Iron, and cause it to be worked up into Wares; (f) Locksmiths; (g) Milliners; (h) Nailers; (i) Salesmen; (k) Shoemakers; (l) Smiths; (m) Tanners; (n) Taylors; (o) Weavers, and the like, here, though Part of the Gain is by bodily Labor, and not by buying and selling, yet they are within the Statutes of Bankrupt; for the Labor is only in Melioration of the Commodity, and rendering it more fit for Sale (p).

If a Man leaves off Trade, he shall be

(a) 3 Mod. Rep. 330.

(b) Com. Dig. 521. Read. Stat. Law. 186.

(c) Com. Dig. 521.

(d) Stone 120.

(e) Com. Dig. 521.

(f) Id.

(g) Bearwes's Lex Mercat. rediviv. 488.

(h) Goodinge. 12.

(i) Com. Dig. 521.

(k) 2 Black. Com. 476. Com. Dig. 521.

(l) 2 Black. Com. 476.

(m) 3 Mod. 330. Hut. 46.

(n) Their Trade being now greatly altered, most of it consisting in buying and selling: but mere working Taylors are not, because they do not get their Living by buying and selling, but by making Garments for their Customers, who send them the Materials they work upon. Read. Stat. Law. 185.

(o) Cr. Jac. 585. pl. 6.

(p) 2 Black. Com. 476.

Bankrupt

Bankrupt for *Debts contracted before*, but not for *Debts contracted (q) after*.

If one for a while deals in a Trade, and afterwards quits it, but leaves his Stock in the Hands of another, and goes Share with the other, both in Profit and Loss, and after such quitting becomes indebted, and conceals himself from his Creditors, he is (r) Bankrupt.

A Man who trades sometimes in (s) *Ireland*, and sometimes in *England*, may (t) be Bankrupt, but *quere* if only beyond Sea.

Where a Person carries on a Trade in one Kingdom belonging to the Crown of *Great Britain*, and comes over to another, a Commission may be taken out by a Creditor in the Place where he then happens to be, as he has traded to this Kingdom and contracted Debts here; so said by Lord *Hardwicke*; and his Lordship observed that there were several (u) Instances of this Kind,

(q) *Comb. 463. Ventr. 5. 12 Mod. 159. Lord Raym. 287.* This is admitted by the Court, according to *Sid. 411. pl. 7.* The Court only seemed of that Opinion according to *Lev. Rep. 17.* so resolved according to *Palm. 325. See 3 Keb. Rep. 451.*

(r) Resolved in *Palm. 325. See Bur. Rep. 6. 8.*

(s) Lord *Hardwicke* said, that the Bankrupt Laws were not adopted in *Ireland. Atk. Rep. 82. pl. 31.*

(t) *2 Vern. 162.*

(u) *John Ashley* went from *England* in 1720, and resided in *Barbadoes* till 1735, where he was a Factor and a Planter, and traded to *England* by sending Goods from his Plantations, and receiving Goods where

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where Persons belonging to the Plantations abroad, and which is their sole Place of Residence, yet happening to be in *England*, have had Commissions of Bankrupt taken out against them here (*w*).

The Petitioner applies to supersede a Commission of Bankruptcy taken out against him, insisting that as he is a *Clergyman*, and is now, and hath been ever since 1729, Rector of the Parish Church of *Normanton* in *Derbyshire*, he is not liable to become Bankrupt within the Intent and Meaning of any of the Statutes made concerning Bankrupts.

The Statute of 21 Hen. 8. c. 13. S. 5. was cited for the Petitioner, 'Whereby it is enacted that no spiritual Person, secular, or regular, of what Estate or Degree soever, shall from henceforth by himself, nor by any other for him, nor to his Use, bargain and buy, to sell again for Lucre, Gain or Profit, in any Market or

back again bought in *England*, and he disposed of Goods sent from *England* in *Barbadoes*, for Merchants in *England* as a Factor, and being greatly indebted came to *England* in 1737, and committing an Act of Bankruptcy, a Commission issued, and upon a Question, whether he was within the Statutes of Bankrupt, upon the Authority of *Bird and Sedgwick's Salk.* 110. pl. 5. (where a Gentleman of the *Temple* going to *Lisbon*, turning Factor, trading to *England* and breaking) was adjudged a Bankrupt. By *Hardwicke Chanc. Mich.* 1737. *Beawes's Lex Mercat.* rediviv. 488. 2d Edit. (*w*) *Atk. Rep.* 82. pl. 31.

'Fairs,

' Fairs, and other Places, any Manner of
 ' Cattle, Corn, Lead, Tin, Hides, Tallow,
 ' Fish, Wooll, Wood, or any Manner of
 ' Victual or Merchandize, what Kind soever
 ' they be of, upon Pain to forfeit treble the
 ' Value of every Thing by them, or by any
 ' to their Use, bargained and bought to
 ' sell again, contrary to this Act, and that
 ' every such Bargain and Contract hereafter
 ' to be made by them, or by any to their
 ' Use, contrary to this Act, shall be utterly
 ' void and of none Effect, and the one half
 ' of every such Forfeiture to be to the King,
 ' and the other half to him that will sue
 ' for the same (x);' and it was argued that
 as this Act past before any Statute of Bank-
 rupts and is still in Force, no subsequent
 Act could ever intend to include a spiri-

(x) Lord Chancellor *Hardwicke*: this Statute
 is rather in the Nature of a Prohibition, and a
 Prohibition will not exempt the Party from being
 Bankrupt; for if a Man, with his Eyes open, will
 break the Law, that does not make void the Contract,
 it is undoubtedly very improper for a Person to say, I
 have broke the Law, and therefore I am exempt from
 any Remedy a Creditor may have against me; and the
 Petitioner cannot take Advantage of the Breach of our
 Law, in order to avoid his being subject to another;
 this is different from usurious Cases, because then both
 the Borrower and Lender are equally criminal, as he
 takes the Advantage of the Borrower's indigent Cir-
 cumstances; but it is not so here, for the Borrower
 only acts in Breach of the Law, and the Lender may
 not know it at the Time, or that he is a Clergyman.
Atk. Rep. 199.

tual

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tual Person under the general Words of the Bankrupt Acts; and as by these Acts he is to be examined upon Oath with regard to the Discovery of his Estate, it would oblige the Petitioner to accuse himself, and lay him open to the Penalties (y) of the Statute of *Hen. 8.* and it was further said of the same Side, that the Clergy have many Privileges, some belonging to their Persons, and some to their ecclesiastical Benefices; therefore though in many Cases where Persons hold Lands and Tenements, by Reason whereof they are liable to be elected to Offices, as a Reeve, Bailiff, &c.

(y) As to the Penalty in this Statute of *Hen. 8.* Lord Chancellor *Hardwicke* was inclined to be of Opinion on this Part of the Act, that the Contract should be void, as to the Parson himself only; for it would be a most extraordinary Construction of the Statute that the Bargain should be void for his own Benefit; and it would be very mischievous to construe the Act in such a Manner; Many Persons in this Kingdom deal as Graziers in buying of Cattle, &c. the Seller does not know a Grazer to be a Clergyman; shall the Bargain then be void for the Parson's Benefit? Suppose in the Counties of *Surry, Kent, &c.* a Parson buys a Quantity of Hops, can the Vender know that he buys to consume only in his House, and not to make a Profit by retailing them again? If such a Contract therefore was to be made void by the Statute of *Hen. 8.* it would be a great Hardship and Inconvenience to Venders; Lord *Hardwicke* mentioned this to shew the Mischiefs which would result from such a Construction, and consequently this Part of the Act ought to be so construed, as to make it a Penalty on himself only. *Atk. Rep.* 200.

yet

yet the Clergy are discharged from such Services by Reason of their Function, and there is a Writ in the *Register* which lies for their Discharge, *Reg.* 187. b. recites *quod Clerici infra sacros Ordines constituti non elegantur ad Officium*, and Lord Coke, 2 Inst. 2. 3. upon *Magna Charta* speaking of the Privileges of the Clergy, lays it down that they are not to be chosen into any temporal Office; and in *Ventr.* 105. there is the following Case: One Dr. Lee having Lands within the Level, was made an Expenditor by the Commissioners of Sewers in the County of Kent, whereupon he prayed his writ of Privilege to the Court of King's Bench, and it was granted; for says the *Register*, *Vir militans Deo non implicetur in Negotiis secularibus*, and the ancient Law, *quod Clerici non ponantur in Officia*. This was the Rule as established by the Common Law, but it has been said the Statutes of Bankrupts are general, and therefore the Clergy ought not to be exempt; but then the 21 of Hen. 8. prohibits this Order of Men from exercising any sort of Trade or Merchandize, by buying and selling again, with a View to prevent them being diverted from the proper Business of their Function, and their Contracts are *ipso Facto* void with a severe Penalty. Those Laws that have the Sanction of a Penalty annexed to them, are more regarded than Acts of Parliament, which

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which are merely prohibitory, without any Penalty. Can it be intended, when by a former Act the Legislature had prohibited the Clergy from exercising any Trades, that they meant to include them under the general words *Person and Persons* in the Bankrupt Acts? There is not a Word in these Acts that seems to comprize the Clergy. General words in an Act of Parliament may be restrained, when the Reason of the Law seems to require it. In the Case of *Long v. Baker Rol Rep. 202.* it is laid down as a Rule in the Construction of Statutes, that a general Law does not make that good, which was disabled by a particular Statute before; And in *Hob. 346.* the Case of *Sheffield v. Ratcliffe*, he says, Judges have a Power in the Construction of Statutes to mould them to the truest and best Use according to Reason and Convenience. Acts, general in Words, have been construed to be but particular, where the Intent was particular. *Plow. 204. Stradling v. Morgan*; for though the Statute of Hen. 7. of Fines be conceived in general Terms, and will bind Corporations in general, yet by Construction of Law the Successor of a Parson, Vicar, or any other sole Corporation, shall have five Years to make his Claim; for if by their Laches they should bind their Successors, it would cause a Diminution of ecclesiastical Livings; and therefore by Construction

Construction of the general Law they are excepted, 11 Co. *Magdalen College Case*, 71. a. Can the Bankrupt Acts be said to intend *the Clergy*, when they describe Persons using the most secular Employments which are prohibited to the Clergy, and to mean those very Persons which they do not describe, but who by the Statute of *Hen. 8.* are forbid to fall under that Description? If this had been the Construction, there must have been some Instances; and where the Penning of an Act is dubious, long Usage is a just Medium to expound it by, for *Jus et Norma loquendi* is governed by Usage. If the Petitioner should be adjudged a Bankrupt, what must be done? Can the Commissioners examine him touching an Act of Bankruptcy? This is not to be done, without examining (2) into his Buying and Selling; this sub-

(2) Lord *Hardwicke* said, as to the Objection of examining the Petitioner as to his Estate and Effects; in the Case of Smuggling (see fol.) there was no Examination of the Commissioners, but would subject to Penalties; and yet that is no Reason why the Commission should not proceed; for if the Bankrupt has an Objection to the Question, he must demur to the Interrogatories, and the Court of *Chancery* will judge of the Question upon a Petition; or if the Bankrupt refuses to answer any Question, and the Commissioners commit him, and the Delinquent brings his *Habeas Corpus*, the Question must be set forth, particularly in the Return to the *Habeas Corpus*, that the Judges may judge whether it was a lawful Question or not, and notwithstanding all this, the Commissioners may undoubtedly
jects

jects him to a Forfeiture, and the Bankrupt Acts could never intend the Power of Commissioners to examine, should be so extensive, as to enable Commissioners to examine Persons, who, if they discover, must subject themselves to a Forfeiture. Could the Commissioners assign over his (a) Living?

examine as to his Estate and Effects, what he has, where it lies, &c. *Atk. Rep.* 200.

(a) Lord *Hardwicke* observed, that the Objection that a Clergyman's is a spiritual Preferment, and that his Living was not within any of the Statutes relating to Bankrupts, was indeed a doubtful Question. To be sure there are in the Bankrupt Acts no Words that relate merely to ecclesiastical Estates, and therefore it is said, if the whole Living is seized, it may prevent serving the Cure; but I do not know this would be the Consequence. 1st. a *Fieri facias de Bonis* issues against the Parson, and the Sheriff returns *nullum laicum Feodum*, then a special *Fieri facias de Bonis ecclesiasticis* issues to the Bishop, and he apportions a Part to serve the Cure, and the Remainder is taken under the Execution. This Rule has been constantly followed, but I do not know any particular Law for it; and yet the Court follows the Rule of Law analogically, but tho' they permit a Sequestration to issue, yet the Bishop in that Case allots a sufficient Part of the Living for the Service of the Cure. I do not see (but I give no Opinion) why the same Method may not be followed under the Commission of Bankruptcy, for it does not appear to me, that this would supersede the Bishop's Authority. A Parson holds a Living in Right of the Church, and it is not for his own Benefit, but for the Good of the Church, he is presented to it, and therefore may properly be said to be *in autre Droit*, as he is seized in Right of the Church, and in some Respects may be compared to an Executor who acts *in autre*

No,

no, for the Assignee must either have the whole or none; so that there can be Nothing left for the Performance of divine Service in this Case, which is, of itself, an Argument it was not the Intention of the Bankrupt Acts to include spiritual Persons; besides, he may defeat such an Assignment at any time, for he may resign, and is not obliged to keep a Curate. And in another Instance of sequestring a Living, the Law has provided that enough must be left of the Benefice for the Cure, that the Parishioners may not be without a Person to perform divine Service; and therefore in cases of Debts, if the Sheriff returns that a Defendant is *Clericus beneficiatus nullum habens laicum Feodum*, he can do no more, but then Process must go to the Bishop to sequester his Living. And in such case, as 'tis said in 2 Mod. 256. *Walwyn v. Anbery*, the Bishop may retain to supply the Cure, and pay only the Residue. Here there can be no such Provision, and therefore this becomes a Question of Conveniency. No general Inconvenience can arise from superseding the Commission, as this is the first Instance since the Bankrupt Acts; but there may be a great Inconvenience, if it should not be superseded, because the Cures of such Clergymen cannot be seized.

Droit, though the Parson's is not quite so strong a Case. By Lord Hardwicke, *Atk. Rep.* 200.

In

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In Support of the Commission, it was said, the Trading of the Petitioner was a Partnership with a Potter in *Staffordshire*, and that there was no Dispute as to the Trade or Act of Bankruptcy; for the Bankrupt had not ventured to produce any Affidavit to contradict these Facts (b).

Lord Chancellor Hardwicke declared, if it could be shewn him that the Petitioner had committed a plain Act of Bankruptcy, and had traded, he would not supersede the Commission, because a Man had the Hardiness in a Court of Justice to say, I have been guilty of a Breach of one Law, and therefore release me from the Breach of another. The Affidavits were then read which had been made to support the Commission, and were very strong for that Purpose.

Lord Chancellor. There has no Question been made concerning the Debt of the petitioning Creditor, nor does the Bankrupt contradict his Trading, his having contracted this Debt, or his absconding; and therefore the whole for my Consideration is, whether a Clerk in holy Orders is liable to a Commission of Bankruptcy. I am rather inclined to think he may become Bankrupt. Upon the whole Circumstances of the Case, I am of Opinion, the Commissioners should proceed in the

(b) *Atk. Rep.* 196. pl. 103.

Commission;

Commission; but so as not to prejudice any Remedy the Petitioner may have by an Action at Law (c).

Lord Chancellor *Hardwicke* said, that though a Man be a public (d) Officer, as an Excise Man, &c. yet, if he will trade, he makes himself subject to the Statutes of Bankrupt (e).

If a Person that is a Trader, makes another Executor, who only disposes of the Stock of his Testator, it will not make the Executor a Trader, and liable to a Commission of Bankrupt; and even if an Executor, is the Representative of a Wine Cooper, and finds it necessary to buy Wines to refine the Stock left by the Testator, it will not make him a Trader (f).

A Feme Covert in *London*, being a sole Trader according to the Custom, is liable to a Commission of Bankrupt (g).

Petition to supersede a Commission of Bankrupt upon a Suggestion of the Party's being a married Woman at the Time the Commission issued, and the Wife of the Petitioner; Lord Chancellor *Hardwicke* said,

(c) *Atk. Rep.* 198. 199.

(d) As of the Army, *Atk. Rep.* 214. of the Court, *Stone* 120.

(e) *Atk. Rep.* 206. pl. 109.

(f) By Lord Chancellor *Hardwicke*, *Atk. Rep.* 102. pl. 51.

(g) *Read. Stat. Law.* 186. *Com. Dig.* 521. 2 *Black. Com.* 477. cites *La Vie v. Philips Mich.* 6 G. 3. B. R.

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that as the Party was admitted to be the Daughter of a Freeman of *London*, and appeared plainly to be a separate Trader, by the Custom of *London*, she was clearly liable to Bankruptcy, notwithstanding her Coverture. Petition dismissed (*b*).

A Gentleman at the Bar, who had a Colliery and dealt in Coals at *Durham*, was held such a Trader as might be Bankrupt (*i*).

A Member of the *House of Commons* is liable to a Commission of Bankrupt, if he will Trade (*k*).

Notwithstanding the above Resolution of Lord *Hardwicke*, Merchants, Bankers, Brokers, Factors, Scriveners, and Traders, within the Description of the Statutes relating to Bankrupts, *having Privilege of Parliament*, were not (till the Year 1763) (*l*) *compellable to pay their just Debts, or to become Bankrupts, by Reason of the Freedom of their Persons from Arrests upon civil Proceſs*. But now any Creditor of sufficient (*m*) value of such Merchants, &c. observing the Directions of this (*n*) Act may sue out a Commission of Bankrupt against any such Merchant, &c.

(*b*) *Atk. Rep.* 206. pl. 110.

(*i*) *Str.* 514. 8 Mod. 46. 47.

(*k*) *Atk. Rep.* 200.

(*l*) The Declaration of Parliament in the Preamble to Stat. 4 Geo. 3. c. 33.

(*m*) For the Sufficiency of which see "Petitioning Creditor's Debts, fol.

(*n*) Stat. 4 Geo. 3. c. 33.

and

and proceed thereon in like (o) Manner as against other Bankrupts (p).

Lord Chancellor *Hardwicke* inclined to think a Pawnbroker within the several Statutes concerning Bankrupts, and especially within the general Words of the thirty-ninth Clause of Statute of 5 Geo. 2. c. 30. for though *Pawnbrokers* are not expressly named, yet the general Word *Brokers* in the Statute, is

(o) Though while he continues a Member (says Lord *Hardwicke*) there are some particular Powers of the Commissioners that cannot be exercised. *Atk. Rep.* 201. and Stat. 4 Geo. 3. c. 33. S. 4. declares, that Nothing in that Act shall subject any Person entitled to Privilege of Parliament, to be arrested or imprisoned, during the Time of such Privilege, except in Cases made Felony by the Bankrupt Acts.

By this Provision it should be presumed that *Bankruptcy* does not vacate one's Seat in Parliament, and yet the Situation of a Bankrupt seems incompatible with that of a Member of Parliament, it being necessary that the former should be *divested* of all Estate, and the latter have an Estate to a particular yearly Value.

King *James the First*, in his Proclamation for a Parliament, (as we have it from Lord *Bacon*) out of his Care for the Common Good, and without all Prejudice to the Freedom of Elections, admonished all his loving Subjects, that had Votes in the Election of Knights, Burgesses, and Citizens, that they be truly sensible not to disvalue or disparage the *House* with *Bankrupts* and necessitous Persons, who might desire long Parliaments only for Protection. See Lord *Bacon's* Works, 4to. Edit. 3d vol. 387. 388.

(p) Stat. 4 Geo. 3. c. 33. S. 1.

the

and

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the *Genus*, and all other Kind of *Brokeridge*, the *Species* (q).

Lord *Hardwicke* (r) said, a Commission of Bankrupt formerly issued against a Peer, an Earl of *Suffolk*, for trading in Wines, and though there might be some particular Powers, that Commissioners of Bankrupts could not exercise against a Peer, yet notwithstanding this, he might be liable to a Commission of Bankrupt if he would trade.

The Statutes relating to Bankrupts have been adjudged to extend to Physicians, when they have been proved to have traded or merchandized, or to have bought and sold Goods, Effects, and Merchandizes; and accordingly on the 29th of October 1726, a Commission of Bankruptcy was taken out against Doctor *John Lane*, a Physician in *Bristol*, and he was found a Bankrupt, on his being proved a Dealer in Copper and Lead; and also to private Gentlemen, though never bred up to Trade, but have only invested their Money in it, in Order to make better Interest thereof, notwithstanding they have never acted or appeared in the Trade, or been known to any

(q) *Atk. Rep.* 206. pl. 109.

(r) *Atk. Rep.* 201. See *Stone* 130. Stat. 4 Geo. 3. c. 33.

Persons trading with the Person to whom they so lent the Money, or been personally concerned in the buying and selling any Goods whatsoever.

Using the Trade or Profession of a Scrivener, receiving other Mens Monies or Estates into his Trust or Custody shall be adjudged (s) Bankrupt.

The reason that Scriveners, (who were more numerous than in later (t) Days) were included by the above Statute of *James I.* was for the Relief of their Creditors; whom they have otherwise more opportunities of defrauding than any other Set of Dealers; and they are properly to be looked upon as Traders, since they make Merchandize of Money, in the same manner as other Merchants do of Goods and other moveable (u) Chatels.

Lord Chancellor *Hardwicke*, upon considering the above Clause, declared he was clearly of opinion a *Scrivener* was within the Meaning thereof, and comprehended in the Words, *Bankers*, *Brokers*, and *Factors*, and the Petitioner being one, ordered that the Commissioners should proceed (w) in the Execution of the Commission.

(s) Stat. 21 Jac. c. 19. S. 2.

(t) *Atk. Rep.* 218. pl. 119.

(u) 2 *Black. Com.* 475.

(w) *Atk. Rep.* 142. 143.

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Though a Scrivener does not keep an open Shop, yet as he receives Money belonging to other People, and places it out on Securities, which is the Business of a Scrivener, he may be (x) Bankrupt.

Dealing merely in Smugling and running of Goods, though this is an Offence, and contrary to Act of Parliament, yet still it is a Trading within the Meaning of the Bankrupt Acts, and such Trader is liable to a Commission (y): though there is no Examination of the Commissioners, but will subject the Bankrupt to Penalties; yet that is no Reason why the Commission should not proceed, for if the Bankrupt has any Objection to the Question, he must demur to the Interrogatories, and the Court of Chancery will judge of the Question upon Petition; and notwithstanding, the Commissioners may undoubtedly examine him as to his Estate and Effects, what he has, where it lies, &c. (z).

Lord Keeper (a) *Wright* held that having a Share in the Stationer's Company would make a Man Bankrupt.

A (b) Man makes a Bill of Sale of some Lands, and personal Estate, to another, in

(x) *Atk. Rep.* 218. pl. 119.

(y) *Atk. Rep.* 199.

(z) *Atk. Rep.* 200.

(a) But *Holt Ch. Just.* inclined to the contrary.
2 *Lord Raym.* 851, 852.

(b) *Wil. Rep.* 314.

Trust

Trust to pay his Debts, the Trustee takes the whole into Possession, and disposes thereof, this will not make him a Trader and liable to a Commission of Bankrupt, for there is no such Thing as an equitable (c) Bankruptcy. Lord Parker (d) said, it would lessen the Credit of the Nation to make Trust Stock liable to Bankruptcy.

2. *What Kind and Degree of Trading does not make a Man an Object of the Bankrupt Laws.*

A Man cannot be a Bankrupt by buying and selling, if his principal Means of Living be not gained by it; and therefore a (e) Farmer, though he buys Beasts, Corn and Hay, and afterwards sells them, cannot be Bankrupt; for his principal Means of Living is by his Labor, and not by his buying and selling; nor a (f) Drover or (g) Grazier (as such) for though they

(c) 2 Wil. Rep. 429.

(d) 3 Wil. Rep. 187. Note (A)

(e) Cro. Car. 549. Stat. 5 Geo. 2. c. 30. S. 40. Salk. 110. Stra. 513. 8 Mod. 48. T. Raym, 287.

(f) Stat. 5 Geo. 2. c. 30. S. 40. Before this Statute a Drover was within the Description of a Bankrupt. Danv. Abr. 686. pl. 1. One who buys Cattle at one Fair, keeps them there three or four Days, on his own Ground, and then drives them to another Fair to sell, is a Drover within the Meaning of Stat. 5 Geo. 2. Mills v. Hughes. Mich. 19 Geo. 2. C. B.

(g) Stat. 5 Geo. 2. c. 30. S. 40.

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also buy and sell Beasts, &c. in the Course of Husbandry, yet Trade is not their (*b*) principal, but only a collateral Object; their chief Concern being to manure and till the Ground, and make the best Advantage of its Produce, and besides, the subjecting them to the Laws of Bankruptcy, might be a Means of defeating their Landlords of the Security which the Law has given them above all others, for the Payment of their reserved Rents; wherefore also, upon a similar Reason, a *Receiver* (*i*) of the King's Taxes is not capable (as such) of being Bankrupt; lest the King should be defeated of those extensive Remedies against his Debtors, which are put into his Hands by the Prerogative (*k*).

Buying and selling under particular Restraints, or for particular Purposes, will not make a Man Bankrupt; as if a Commissioner of the Navy uses to buy Victuals for the Fleet, and disposes of the Surplus and Refuse, he is not thereby made a Trader within the Statutes (*l*).

(*b*) Read. on the Stat. Law, 184, 185.

(*i*) Stat. 5 Geo. 2. c. 30. S. 40. Lord Chancellor King said, that declaratory Clauses in temporal Laws might be perpetual, as that *Graziers, Farmers, &c.* could not be Bankrupts, as mentioned in Stat. Geo. 1. though the Act be expired. 2 *Kel.* 7. 2. *Barnard*, K. B. 255.

(*k*) 2 *Black. Com.* 475.

(*l*) *Salk* 110. *Skin.* 292. *Ventr.* 270.

It

It must be a general Trading, and of personal (*m*) Things too, therefore if a Man purchases and sells Lands, (*n*) or if he be a Butler, Steward to the King, to the Inns of Court, (*o*) &c. or a Farmer of the Customs, Excise, &c. such cannot be Bankrupt (*p*).

A Man who lives by buying only, and not selling, cannot be Bankrupt; or by selling only, (*q*) but it must be by both buying and selling; and also getting a Livelihood by it; as by exercising the Calling of a Merchant, a Grocer, or Mercer, or, in one general Word, a *Chapman*, who is one that buys and sells any Thing, nor will one single Act of buying and selling make a Man a Trader; but it must be a repeated (*r*) Practice, and Profit by it (*s*).

(*m*) *Mar.* 37.

(*n*) *Com. Dig.* 522.

(*o*) *Skin.* 292.

(*p*) *Com. Dig.* 522.

(*q*) *Com. Dig.* 522.

(*r*) So that it should seem that a Commission which issued some few Years ago against a Clerk in the *Exchequer* Office, was *illegal*; the Case was this; the Party being considerably indebted, his Friends advised him to become Bankrupt, but were at a Loss how to make him a *Trader*, at last it was agreed that as he was an *Herefordshire* Man, he should provide himself with a Quantity of *Cyder* and sell it to his Friends and Acquaintance; though this, and this only was the *Trading*, yet the Commissioners were pleased to hold it a sufficient Trading for the Purpose of de-

A Trading

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A Trader cannot be Bankrupt for Debts contracted after he has left off his Trade, (t) though he afterwards becomes a Trader again (u); though after leaving off his Trade, he sells his old Stock (w). But *quere*, for afterwards the Court held such a Person Bankrupt; and see the Reason given for the Resolution in *Ventr.* 166.

No Member of the Bank (x) of *England*, of the *East* (y) *India Company*; nor any Person circulating (z) *Exchequer Bills*; nor any Adventurer in the Royal (a) fishing Trade,

frauding his Creditors. Another, a Gentleman had bought several Books for his Amusement or Improvement, and then sold them, this was held *buying and selling* for the same *meritorious Purpose*.

(s) 2 *Black. Com.* 476.

(t) *Sid.* 411. pl. 7.

(u) *Lev. Rep.* 17.

(w) *Ventr.* 29.

(x) Stat. 7 & 8. W. 3. c. 31. 8 & 9 W. 3. c. 20. S. 47. 5 An. c. 13. 7 An. c. 7. 3 Geo. c. 8. S. 43, &c. &c. Buying and selling *Bank Stock*, or other Government Securities, will not make a Man Bankrupt, they not being Goods, Wares, or Merchandizes within the Intent of the Statute, by which a Profit may be *fairly* made. 2 *Black. Com.* 476.

(y) Stat. 13 & 14. Car. 2. c. 24. S. 3. Such Trading did bring a Man within the Statutes before this Act. *Good.* 17. Dealing in *East India Stock* will not make a Man liable to Bankruptcy. 2 *Wil. Rep.* 308. See *Com. Rep.* 355, 356. But if a Trader put Money into the *East India Company* and abscond, he is a Trader within this Act. 2 *Keb. Rep.* 487. pl. 30.

(z) See the several Statutes relating thereto.

(a) Stat. 13 & 14 Car. 2. c. 24. S. 3.

or

or in the (b) *Guinea Company*; nor any Member of the *London (c) Assurance* or *Royal (d) Exchange*, or *South (e) Sea Companies*, or a Sharer in the *Stationers (f) Company*, shall be deemed Bankrupt on Account of his Stock in the said Companies.

No Handicraft (g) Occupation (where Nothing is bought and sold, and therefore an extensive Credit for the Stock in Trade is not necessary to be had) will make a Man a regular (h) Bankrupt, as that of a *Gardiner (i) Gold-beater*, (k) *Gun-founder*, *Husbandman* and the like, who are paid for their Work and Labor (l).

An Infant under the Age of twenty-one Years, though a Trader, cannot be made a Bankrupt in Respect to Debts contracted during his Infancy, though the Act of

(b) Stat. 13 & 14 Car. 2. c. 24. S. 3.

(c) Stat. 6 Geo. c. 18. S. 10.

(d) Stat. 6 Geo. c. 18. S. 10.

(e) 9 An. c. 21. 3 Geo. c. 9. S. 7. 5 Geo. c. 19. 6 Geo. c. 4. 8 Geo. c. 4. 8 Geo. c. 21. S. 12.

(f) Holt Ch. Just. inclined to this Opinion, but Lord Keeper Wright held that such Sharer was not within the Bankrupt Statutes. 2 Lord Raym. 851, 852.

(g) Cro. Car. 31.

(h) 2 Black. Com. 476.

(i) Stone, 120.

(k) Because he works for the Service of the Army, and the Work is delivered for the Use of the King. Skin. 292. And because it is a particular Undertaking. Show. Rep. 270.

(l) Cro. Car. 31.

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Bankruptcy be committed after he was of Age, for an Infant can owe Nothing but for Necessaries; and the Statutes of Bankruptcy create no new Debts, but only give a speedier and more effectual Remedy for recovering such as were before due (*m*). And no Person can be made a Bankrupt for Debts which he is not liable at Law to pay (*n*). Lord Chancellor *Hardwicke* said, that notwithstanding Lord (*o*) *Macclesfield* held in the Case of one (*p*) *Whitlock*, that an Infant might be a Bankrupt, yet it had been determined otherwise (*q*) since (*r*).

An Inn-keeper cannot, as (*s*) such, be a Bankrupt; for his Gain or Livelihood does not arise from buying and selling in the Way of Merchandize, but greatly from the Use of his Rooms and Furniture, his Attendance and the like; and though he may buy Corn and Victuals, to sell again

(*m*) 2 *Black. Com.* 477.

(*n*) Lord *Raym.* 443. 12 *Mod.* 243.

(*o*) Lord Chancellor *Macclesfield* only doubted, whether he might not be a Bankrupt; but Lord Chancellor *King* was clear of Opinion he could not. *Sel. Cas. in Chanc.* 46, 47.

(*p*) *Sel. Cas. in Chanc.* 46.

(*q*) We believe there is no *Book Case* since.

(*r*) *Atk. Rep.* 146. pl. 86.

(*s*) But where an Inn-keeper is a *Chapman* also, (one who buys and sells any Thing, 2 *Black. Com.* 476.) he may on that Account be Bankrupt, though not barely as an Inn-keeper, and this has been frequently seen. 7 *Vin. Abr.* 57. pl. 15. in Notes.

at a Profit, yet that no more makes him a Trader, than a (*t*) Schoolmaster or other Person is, that keeps a boarding House, and makes considerable Gains by buying and selling what he spends in the House, and such an one is clearly not (*u*) within the (*w*) Statutes.

Having Part in a Ship will not make the Party a Trader, unless he freights (*x*) it; nor when he freights it, if he does not get

(*t*) Some few Years ago a Commission issued against a Schoolmaster, and he was declared Bankrupt; the Trading was buying Books and selling them to his Scholars; as this Commission was inserted in the *Gazette*, that Circumstance alone, it seems, according to *Davies*, (the Folio Writer on the Bankrupt Laws) is an incontestable Proof of the Legality of the Commission; as the *Gazette* is a Paper published by *Authority*, such Commissions are a Disgrace to it, as well as to the Great Seal; but we may be told that *this*, and the other Commissions noticed by us in Note (*r*) of fol. 29. were what are vulgarly called *friendly* ones, and therefore as the Parties most materially interested (the Bankrupts) were satisfied, nay, *perhaps solicited* the Commission, all is right; but with due Submission the *Creditors*, and not the *Bankrupts*, are the Parties most materially interested, and what is still worse, most materially injured by *friendly* Commissions, for they are generally *fraudulent* ones.

(*u*) Lord *Raym.* 287. *Carth.* 151. 3 Mod. Rep. 330. *Ventr.* 270.

(*w*) 2 *Black. Com.* 476. 12 Mod. 159. Lord *Raym.* 287. 3 Mod. Rep. 329. *Show. Rep.* 96. 269.

(*x*) *Com. Rep.* 356.

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so much as is due upon the Bottom for (y) Repairs; nor will having a Share in a Barge, or Stage Coach, which are let to Hire (z); nor will having some Stock in a Ship make the Party a Merchant, because it is frequent for Persons to adventure some particular Things in such a Ship for such a Voyage, and by the Statutes of Bankrupt, *professed* Merchants are only meant, who are in *constant* (a) Trading.

Sutlers (b) to Armies are not liable to the Bankrupt Laws, neither does the having a joint Stock without some Proof of the Disposal of it (c), make a man subject to those Laws. As to *Taylors*, see fol. 10.

2. Acts of Bankruptcy.

Having (d) thus considered who may, and who may not, be made a Bankrupt, we are to enquire, Secondly, by what Acts a Man may become a Bankrupt. A Bankrupt is "a Trader, who secretes himself, or does certain other Acts, tending to defraud his Creditors." We have hitherto

(y) *Sid.* 411. pl. 7. *Ventr.* 29.

(z) *T. Raym.* 287.

(a) *Salk.* 109, 110. *Skin.* 276. pl. 1. *Id.* 291. pl. 2. *Comb.* 181.

(b) 3 *Keb. Rep.* 451. pl. 16.

(c) 2 *Keb. Rep.* 487. pl. 30.

(d) 2 *Black. Com.* 477.

been

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been employed in explaining the former Part of this Description, "a Trader:" let us now attend to the latter, "who secretes himself, or does certain other Acts, tending to defraud his Creditors." And in general, whenever such a Trader, as is before described, hath endeavoured to avoid his Creditors, or evade their just Demands, this hath been declared by the Legislature to be an Act of Bankruptcy, upon which a Commission may be sued out. For in this extrajudicial Method of Proceeding, which is allowed merely for the Benefit of Commerce, the Law is extremely watchful to detect a Man, whose Circumstances are declining, in the first Instance, or at least as early as possible: that the Creditors may receive as large a Proportion of their Debts, as may be; and that a Man may not go on wantonly wasting his Substance, and then claim the Benefit of the Statutes, when he has Nothing left to distribute.

Under this Head we purpose considering

1. *What are not Acts of Bankruptcy.*
2. *What are.*
3. *What is Evidence of them.*
4. *What are repealed; and*
 1. *What are not Acts of Bankruptcy.*

According to Lord Bacon's Method, we will first take the negative Side of the Question,

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Question, and consider what are *not* Acts of Bankruptcy.

The several Acts of Bankruptcy, expressly defined by the Statutes (*e*) relating to this Title, being so numerous, and the whole Law of Bankrupts being an Innovation on the Common Law, our Courts of Justice have been tender of extending or multiplying Acts of Bankruptcy by any Construction or Implication (*f*); and therefore L. C. J. *Holt* held, that a Trader, upon hearing that a Writ of *Fi. Fa.* was issued against him, to the Intent to preserve his Goods from being levied in Execution, his clandestinely conveying them out of his House, and concealing them privately, was no Act of Bankruptcy (*g*); for the Statutes mention only fraudulent Gifts to third Persons, and procuring them to be seized by sham Process, in order to defraud Creditors; but this, though a palpable Fraud, yet falling within neither of those Cases, cannot be adjudged an Act of Bankruptcy (*h*).

So also it has been determined expressly, that a Banker's stopping or refusing Pay-

(*e*) These Statutes do ascertain what Acts make a Man Bankrupt, and there can be no such Thing as an *equitable* Bankruptcy, it must be a *legal* one. So said by Sir *Joseph Jekyle*, Master of the Rolls, 2 *Wil. Rep.* 429.

(*f*) 2 *Black. Com.* 479.

(*g*) Lord *Raym.* 725.

(*h*) 2 *Black. Com.* 479.

ment

(*i*)
Marg
(*k*)

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ment is no Act of Bankruptcy (*i*); for it is not within the Description of any of the Statutes, and there may be good Reasons for his so doing, as, Suspicion of Forgery, and the like; and if, in Consequence of such Refusal, he is arrested, and puts in Bail, still it is no Act of Bankruptcy (*k*).

2. *What are Acts of Bankruptcy.*

In Order to learn what the particular Acts of Bankruptcy are, which render a Man Bankrupt, we must consult the several Statutes, and the Resolutions formed by the Courts of Justice thereon; among them appear the following ones :

1. *Departing the Realm.*
2. *Beginning to keep his House.*
3. *Absenting himself.*
4. *Taking Sanctuary.*
5. *Willingly or fraudulently procuring himself to be arrested.*
6. *Suffering himself to be outlawed.*
7. *Yielding himself to Prison.*
8. *Departing from his Dwelling-house.*
9. *Willingly or fraudulently procuring his Goods, Money, or Chattles to be attached or sequestered.*

(*i*) *Moseley's Rep.* 3. 7 *Vin. Abr.* 61. pl. 12. in *Marg. Sel. Cas. in Chanc.* 42, 43.

(*k*) 7 *Mod.* 139.

10. *Making*

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10. Making any fraudulent Grant or Conveyance of his Lands or Chattles.
11. Obtaining any Protection (otherwise than being lawfully protected by Parliament.)
12. Preferring unto his Majesty, or unto any of the King's Courts, any Petition or Bill against his Creditors, or any of them, thereby desiring or endeavouring to compel them to accept less than their just and principal Debts, or to procure Time or longer [more] Days of Payment, than was given at the Time of their original Contracts.
13. Being arrested for Debt, after his Arrest, lying in Prison two Months upon that, or any other Arrest or Detention for Debt.
14. Being arrested for one hundred Pounds or more, of just Debt, after such Arrest, escaping out of Prison.
15. Paying to the petitioning Creditor, or delivering to him Goods or Security for his Debt, whereby he shall privately have more in the Pound, than the other Creditors.
16. Neglecting to make Satisfaction for any just Debt to the Amount of one hundred Pounds, within two Months after Service of legal Process, for such Debt, upon any Trader having Privilege of Parliament.

The

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The Reader is desired to observe (to avoid Repetitions) that these several Acts of Bankruptcy must be committed with an Intent, or whereby Creditors *(l)* are or may be defrauded, or defeated of, or delayed from, the Recovery of their just Debts *(m)*. And also that they must be committed subsequent both to the Trading and the petitioning *(n)* Creditor's Debt, and within *(o)* six Years

(l) Cited (as so determined) by Sir John Strange (late Master of the Rolls) in *Degols v Ward Hil.* 12 Geo. 2.

(m) Stat. 13 El. c. 7. S. 1. 1 Jac. c. 15. S. 2. *Palm.* 325. *Keb. Rep.* 11. pl. 25. *Caf. Temp. Holt.* 95. pl. 5. *Salk.* 110. pl. 6. *Atk. Rep.* 77. *id.* 201. pl. 104. *Bur. Rep.* 439. 472.

(n) 2 Stra. 744. *Caf. Temp. Talb.* 243, 244. *Sel. Caf. of Evid.* 147. See *Wil. Rep.* 783. pl. 229.

(o) *Moseley* 37. Lord Talbot seemed of Opinion, that an Act of Bankruptcy committed four Years before the Commission issued, was too stale, but on Appeal, the Lords with the Concurrence of all the Judges reversed his Decree founded on that Opinion. *Caf. Temp. Talb.* 243, 244. By Stat. 21 Jac. c. 19. S. 14. no bona Fide Purchaser shall be impeached by Virtue of the Bankrupt Statutes, unless the Commission be sued forth within five Years after the Party becomes Bankrupt. If therefore a Commission of Bankruptcy could not issue in any Case whatsoever, beyond that Time, this Declaration of the Legislature seems nugatory, for who could be affected by an Act, which could never exist? But it must be within six Years, because the petitioning Creditor's Debt, whereon the Commission is founded, must have accrued within that Time, *Moseley* 37. and the Act of Bankruptcy (as observed above) must be subsequent, in Point of Time, to the petitioning Creditor's Debt.

next

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next before the issuing of the Commission; and to observe further, that it is a Point not yet (*p*) settled whether committing Acts of Bankruptcy beyond Sea be within the Reach of the Statutes.

1. *Departing the Realm* (*q*).

By this a Man withdraws himself from the Jurisdiction and Coërcion of the Law, with Intent to defraud his Creditors (*r*).

A Merchant departs the Realm to merchandize, and becomes indebted, and to avoid Arrests, defers his Return; this doth *tantamount* to a departing of the Realm (*s*).

If a Merchant departs the Realm with the Consent of his Creditors, he does not thereby commit an Act of Bankruptcy.

A *Capias de excommunicato capiendo* is awarded against one, who, for Fear of Arrest, departs the Realm, he is no Bankrupt (*t*).

The same for departing the Realm for Fear of an Attachment in *Chancery* (*u*).

In the Case of one *Woodier*, a Mercer on *Ludgate-Hill*, against whom his going beyond Sea being given in Evidence, it was insisted

(*p*) 2 *Vern.* 162.

(*q*) Stat. 13 El. c. 7. S. 1. 1 Jac. c. 15. S. 2.

(*r*) 2 *Black. Com.* 478.

(*s*) Read. Stat. Law. 186.

(*t*) *Com. Dig.* 523.

(*u*) *Com. Dig.* 523.

that

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that shewing *quo Animo* it was done, (viz. on Account of having killed his Wife) it could not be construed an Act of Bankruptcy; but it appearing that his Creditors were thereby in Fact prevented from recovering their Debts, Chief Justice *Reeves* held it was, but if that Fact had not come out, it would have been otherwise (*w*).

2. Beginning to keep House (*x*).

Keeping in his *own* (*y*) House, privately, so as not to be seen or spoken with by his Creditors, except for just and necessary Cause, is likewise construed to be an Intention to defraud his Creditors by avoiding the Process of the Law (*z*).

If a Tradesman conceals himself, or absconds within his House, with Design to delay or defraud his Creditors, it makes him Bankrupt (*a*), though the Concealment

(*w*) Cited by Sir *John Strange* (late Master of the Rolls) in *Degols v Ward*. Hil. 12 Geo. 2. B. R. Bur. Rep. 471. 484.

(*x*) Stat. 13 El. c. 7. S. 1. 1 Jac. c. 15. S. 2.

(*y*) Or having no House of his *own*, keeping in another Man's House, or in an upper Chamber, *Stone* 124. Keeping on Ship-board, is keeping his House, *Stone* 123. So is a Miller's keeping in his Mill, or a Churchwarden in the Church, *Com. Dig.* 523.

(*z*) 2 *Black. Com.* 478.

(*a*) *Palm.* 325. 2 *Shorw. Rep.* 523.

be

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be only for a little Time, or he be sued only as Surety for another.

Keeping House to avoid an Attachment for not Delivery of Goods, *no Debt* being due, is *not* an Act of Bankruptcy (*b*); but otherwise, for Fear of an Attachment in Chancery (*c*).

If a Man denies (*d*) himself, when he knows that a Creditor comes for his Debt, he will be Bankrupt (*e*).

The Denial of the Party must be with an Intent to delay (*f*) Creditors, therefore, being denied when (*g*) sick in Bed, or en-

(*b*) *Atk. Rep.* 196. pl. 102.

(*c*) *Atk. Rep.* 240. pl. 131.

(*d*) Lord Chancellor *Talbot* said, that a Debtor's denying himself to a Creditor by Note payable at a future Day was not an Act of Bankruptcy; it must be a keeping House, &c. in order to defeat or delay Creditors of their Debts, which could not be in the present Case, because the Creditor had then no Debt due to demand. 7 *Vin. Abr.* 61. pl. 14. And Lord Chancellor *Hardwicke* declared, that a Person's denying himself to a Creditor who called at 11 o'Clock at Night, was *no* Act of Bankruptcy; for it could not be said to be done *with an Intent to defraud his Creditors*, which is the Ingredient the Acts of Parliament require to make a Man Bankrupt. *Atk. Rep.* 201. pl. 104.

(*e*) *Com. Dig.* 523.

(*f*) It must be proved that the Person to whom the Party was denied was a Creditor, for which Purpose it is necessary to name them, by *Lee Ch. Just. at Guildhall. Jackman v Nightingale. East.* 13 Geo. 2. B. R.

(*g*) If a Trader orders himself to be denied, Circumstances may shew that he did not do it to avoid

gaged

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gaged in Company, would be no Act of Bankruptcy; and L. C. J. *Lee* held the same where the Denial was by (b) Agreement in order (i) to take out a Commission.

If a Trader, upon Notice of Process issued forth against him, keeps his House to secure himself from the Arrest, and after goeth forth again, and then, upon like Notice, keeps his House, and then again goeth forth: this bringeth him not within the Statutes of Bankruptcy, because he uses to go at large, and his Policy will not always prevent the serving of Process on him, for he may be met withall unwittingly one Time or other (k).

If a Man commits a plain (l) Act of Bankruptcy, as keeping House, &c. though he after goes abroad, and is a great Dealer,

Payment, but on Account of Sickness or particular Business. *Bur. Rep.* 484.

(b) But the late Mr. Justice *Foster* held it a sufficient Proof of an Act of Bankruptcy; the Fact proved was, that the Party, in Consequence of an Agreement made at a Meeting of the Creditors two Hours before, (at which he and the Plaintiff were both present) was denied to the Plaintiff's Clerk who was sent to demand Money. at *Guildhall. Bromley v Munde.* 2 June 1756. *B. R.*

(i) *Field v Bellamy*; *Hilary* 15 Geo. 2. *B. R.*

(k) *Cr. Eliz.* 13. pl. 6.

(l) If after a plain Act of Bankruptcy committed, he pays off, or compounds with all his Creditors, he is become a new Man. *Salk.* 110. pl. 6. *Cases Temp. Holt. C. J.* 95. pl. 5.

yet

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yet that will not (*m*) purge the first (*n*) Act of Bankruptcy (*o*). See 8. "Departing from his Dwelling House." fol. 48.

3. Absenting himself (*p*).

If a Man absents himself for Felony, it is an Act of Bankruptcy, if his Creditors are thereby delayed of their just Debts, otherwise not (*q*).

Absenting for Fear of being arrested by a *Cap. de excom. Cap.* will not make a Man Bankrupt (*r*); but

Absenting for Fear of being arrested by an Attachment out of Chancery, for Non-Payment of (*s*) Money decreed, makes him Bankrupt (*t*).

(*m*) No Act of Bankruptcy can be purged but by obtaining a Certificate. *Bur. Rep.* 474. 2 *Black. Com.* 485, 486. *Cas. Temp. Talb.* 244.

(*n*) But if the first Act was not plain but doubtful, then going abroad and trading will be an Evidence to explain the Intent of the first Act, for if it was not done to defraud Creditors, and to keep out of the Way, it will not be within the Statutes. *Salk.* 110. pl. 6. *Cas. Temp. Holt. C. J.* 95. pl. 5.

(*o*) *Salk.* 110. pl. 6. *Cas. Temp. Holt. C. J.* 95. pl. 5.

(*p*) Stat. 13 El. c. 7. S. 1. 1 Jac. c. 15. S. 2.

(*q*) See 1. "Departing the Realm," fol. 40.

(*r*) *Com. Dig.* 523.

(*s*) But it does not, if it were for not making a Conveyance. *Billingh.* 92. pl. 13.

(*t*) *Com. Dig.* 523.

If

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If a Man has no constant Dwelling, if he absents himself from his usual Abode, he shall be adjudged Bankrupt (*u*).

A Merchant indebted departs the Realm to merchandize, and having Loss by Tempest returns no more, this is not a departing, but an absenting himself (*w*). For more of *absenting* see 2. "*Beginning to keep House*." fol. 41.

4. Taking Sanctuary (*x*).

Taking Sanctuary is when a Person takes Refuge in any Place in which the Law cannot be so readily executed upon him, and to delay the Payment of his Debts to his Creditors, viz. within the Verge of the Court, or in any other particular Place of Refuge: but it seems that where a Person hath lived and resided within the Verge of the Court for many Years, that such Residence cannot be deemed an Act of Bankruptcy, notwithstanding a Person so resident has been declared Bankrupt, and the Commission has even appeared in the Gazette; but *minus juste*.

(*u*) Com. Dig. 523.

(*w*) Stone 123, 124.

(*x*) Stat. 13 El. c. 7. S. 1. 1 Jac. c. 15. S. 2.

5. Willingly

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5. *Willingly or fraudulently procuring himself to be arrested (y).*

Suffering himself to be arrested, without just and lawful Cause, is likewise deemed an Attempt to defraud his Creditors (z); and therefore, if he becomes a Prisoner in the *Fleet* or *Marshalsea*, he will be a Bankrupt (a). Or if he cause a voluntary, or feigned (b) Action to be commenced against him (c). So, where the Party procures himself to be arrested upon a *sham Debt*, that by the Statute of *Elizabeth*, is immediately an Act of Bankrupt (d).

6. *Suffering himself to be outlawed (e).*

But an Outlawry in *Ireland* does not make one Bankrupt (f), nor an Outlawry here unless it be with Intent to defraud Creditors, as it seemeth (g), or, if it be re-

(y) Stat. 13 El. c. 7. S. 1. 1 Jac. c. 15. S. 2.

(z) 2 Black. Com. 478.

(a) Com. Dig. 523.

(b) As at the Suit of a friendly Plaintiff in order to be turned over from one Prison to another; for this being mere *Form*, the Bail never justify; per Lord Mansfield. Bur. Rep. 439.

(c) Com. Dig. 523.

(d) 7 Vin. Abr. 62.

(e) Stat. 13 El. c. 7. S. 1. 1 Jac. c. 15. S. 2.

(f) Com. Dig. 524. but in the County Palatine of *Dnrham* it does, *Stone* 124. *Billing*. 94, 95. *Good*. 23.

(g) *Lev. Rep.* 13. *Keb. Rep.* 11. pl. 25. 2 *Sid.* 69. 114. 176.

versed

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versed before the Commission issues; or, reversed, for Default of Proclamations after the Commission (*b*).

7. *Yielding himself to Prison (i).*

This is to be intended a voluntary yielding, and not when a Man is imprisoned for Non-payment of a Fine, or any refractory Carriage; for although the Act which causeth the Imprisonment be voluntary, yet the Imprisonment itself is (*k*) involuntary.

B. was arrested for twenty eight Pounds, and though he had Money sufficient to pay the Debt, yet chose rather *to go to Prison*, in order, as he declared, to force his Creditors to come to a Composition; and by Lord Chancellor *Talbot* this is an Act of Bankruptcy, within 1 *Jac.* though without such Intent yielding himself to Prison was no Act of Bankruptcy, unless he lay there two Months (*l*).

(*b*) *Com. Dig.* 524.

(*i*) *Stat.* 13 *El.* c. 7. S. 1. 1 *Jac.* c. 15. S. 2.

(*k*) *Billingsb.* 95. *Good.* 25.

(*l*) 7 *Vin. Abr.* 61. 62.

8. *Departing*

8. *Departing from his Dwelling House (m).*

Being denied to a Creditor is only Evidence of an Act of Bankruptcy (n), absconding is the material Part of it.

This was an Action against the Defendant for a false Return to two *feri Facias*'s, and on Evidence the Case appeared to be thus, viz. The Plaintiff sent into *Essex* a Writ on mesne Process, and a *feri Facias* against one *Ward*, and both Writs were delivered to the Sheriff, and *Ward* was arrested by Virtue of the Writ, about two Hours before the Sheriff took his Goods in Execution by Means of the *Fieri facias*; soon after that Arrest, and before his Goods were taken in Execution, he was carried to *Colchester* to the Officer's House, and desired the Officers that they would not let any one know that he was there; and on being told the next Day, which was *Sunday*, that *Finch*, one of his Creditors, asked after him, he prayed, for God's Sake, don't let him know that I am at your House; and upon *Finch*'s coming the next Day to enquire after him, he then desired of the Officers, that *Finch* might be permitted to see him. In about a Week

(m) Stat. 13 El. c. 7. S. 1. 1 Jac. c. 15. Sz.

(n) Lord *Mansfield* said, If a Trader leaves his House, Circumstances may shew it was not to abscond. *Bur. Rep.* 484.

after

after, the second *Fieri facias* was executed on his Goods; but the Sheriff, supposing that he became Bankrupt from his first Arrest on the mesne Process, delivered the Effects to the Assignees of the Commission of Bankruptcy taken out against *Ward*, and returned *nulla Bona* to both the Writs of *Fieri facias*. Upon hearing the Evidence, *Eyre* Chief Justice of the *Common Pleas*, ordered the Act of King *James 1.* c. 15. Sect. 2. which describes a Bankrupt, to be read, and then said, that between the Time of executing the two Writs of *Fieri facias*, he had been guilty of an Act of Bankruptcy, for that he had withdrawn himself from the Place of his Habitation, and had absented; but Serjeant *Darnell* saying, that that must be done with a Design to defraud his Creditors, the Chief Justice told him his very absenting himself was sufficient Evidence of the Fraud designed. Then Serjeant *Eyre* said, it must be a voluntary absenting of himself, and not by Means of an Arrest; and the Chief Justice said so it was here, for that it appeared on Evidence, (as indeed it did) that on the *Monday* after the Arrest, he was discharged out of Custody on the Writ of mesne Process; and from that Time he secretly withdrew. Therefore the Chief Justice told the Jury, that as here appeared not to be any Act of Bankruptcy committed by *Ward*

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till after the Time of the first Execution, upon that Return they must find for the Plaintiff, and that since he had between the Time of the two Executions so behaved himself, as to make himself Bankrupt, by which the Interest in his Goods was vested in the Assignees; they ought on the last Return to find for the Defendant, which they did (o) accordingly.

On 28 November Hall rode out of Town, and returned in the Evening, before which a Bailiff had been at his Shop to arrest him: the next Morning he sent for the Bailiff, and told him he went out in order to get the Term of the Plaintiff, and now the Return of the Writ was out, if they would take out a new Writ he would give Bail, which was done accordingly. And this was held to be an Act of Bankruptcy within 1 Jac. 1. c. 15. S. 2. which speaks of
 “ *departing from his House with Intent, and*
 “ *whereby his Creditors may be defeated or de-*
 “ *layed from recovering their just (p) Debts.*”

Lord Chief Justice Willes was of Opinion that a Person's absconding to avoid an Attachment upon an Award for Non-delivery of Goods pursuant to the Award, was not an Act of Bankruptcy, because it was not

(o) *Philips & Peck v Sheriff of Essex*, at the Sit-
 tings in C. P. in London, after Term, before Eyre
 Ch. Just.

(p) 2 Stra. 809:

within

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within the Words of the Statute of 1 Jac. c. 15. S. 2. which makes it an Act of Bankruptcy in a Person to depart from his Dwelling-House, in order to avoid the Payment of a *just and true Debt only*, and *not the Delivery of Goods*, for *that is a Duty only*; and Lord Chancellor (q) *Hardwicke* declared, that he thought the Determination of Lord Chief Justice *Willes* a very right one, and that he was very well warranted by the Words of the Statute, in the Distinction he made between *absconding to avoid a Debt*, and *absconding to avoid a Duty only*.

9. *Willingly or fraudulently procuring his Goods, Money, or Chattles to be attached or sequestered (r.)*

Suffering this to be done by any legal Process, is another plain and direct Endeavour to disappoint his Creditors of their Security (s).

But he is not a Bankrupt if his Goods are attached, or sequestered without his Procurement; as, upon an Attachment out of a Court for his Default, or Laches; So, if A. has a Rectory impropriate, and the

(q) *Atk. Rep.* 196. pl. 102.

(r) *Stat.* 1 Jac. c. 15. S. 2.

(s) 2 *Black. Com.* 478.

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Tythes are sequestered for not repairing the Chancel (*t*).

10. *Making any fraudulent Grant or Conveyance of his Lands or Chattles (u).*

And therefore, if he makes a Grant, or Conveyance fraudulent within (*w*) Stat. 13 El. c. 5. or Stat. 27 El. c. 4. it makes him Bankrupt (*x*), and if he makes a fraudulent Grant, &c. he will be Bankrupt, though he afterwards appears publicly upon the Exchange, &c. (*y*)

Making such a Grant, &c. to a Friend, or secret Trustee of his Tenements or Goods, is an Act of the same suspicious Nature as the last (*z*).

A Conveyance by a Trader of his whole Substance, to a particular Creditor, himself continuing in Possession, and acting as visible Owner, though the Conveyance be made by Way of Security, and for valuable Consideration, is fraudulent and a specific Act of Bankruptcy, within the above Clause (*a*).

If a Bankrupt might convey all to a fa-

(*t*) *Com. Dig.* 523.

(*u*) Stat. 1 Jac. c. 15. S. 2. See *Atk. Rep.* 241.

(*w*) See what Conveyances are fraudulent within these Statutes, 2 *Com. Dig.* 461, 462.

(*x*) *Com. Dig.* 525.

(*y*) *Com. Dig.* 525. but *Hut.* 42, 43, seems *contra*.

(*z*) 2 *Black. Com.* 478.

(*a*) By *Ld Mansfield. Bur. Rep.* 484. 2 *Bur. Rep.* 829.

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yourite and friendly Creditor, just before committing an Act of Bankruptcy, the whole Power of selling his Effects, calling in his Debts, and settling his Accounts, must be in such single and particular Creditor; he must have a Right even to the Custody of the Books and Papers; whereby the worst and most dangerous Priority would prevail, depending merely upon the unjust or corrupt Partiality of the Bankrupt (*b*).

Such Preference (*c*) is a Fraud upon the whole Bankrupt Law, and would defeat the two main Objects it has in View; to wit, the Management (*d*) of the Bankrupt's Estate, and an equal (*e*) Distribution among his Creditors (*f*).

A Case happened, where a Conveyance

(*b*) By Lord Mansfield. Bur. Rep. 477.

(*c*) A Trader (even before Bankruptcy) cannot prefer one or more Creditor or Creditors to the Rest by a Conveyance of his whole Estate and Effects. So said by Lord Mansfield. Bur. Rep. 484. 2 Bur. Rep. 829.

(*d*) The Law gives the Management to Persons chosen by the Creditors, under the Direction of Commissioners, and the Controul of the Great Seal. By Lord Mansfield. Bur. Rep. 476.

(*e*) An equal Distribution among Creditors, who equally gave a general personal Credit to the Bankrupt, anxiously provided for ever since the Act of 21 Jac. c. 19. By Lord Mansfield. Bur. Rep. 477. Lord Hardwicke often delivered himself to the same Effect. See Atk. Rep. 183. 229. 233.

(*f*) By Lord Mansfield. Bur. Rep. 476.

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calculated to postpone one Creditor to the rest, was held an Act of Bankruptcy. It came on before Lord *Hardwicke* the late Lord Chancellor, at Lincoln's Inn Hall 31st *July* 1755. One *Gayner*, a Trader, had made an Assignment on the 7th of *June* 1755, of all his Effects, Goods, Stock in Trade, and Book Debts, (except Household Goods, Watches, Plate, Bills of Exchange, Inland Bills, Promissory Notes, and Cash then by him) to Trustees, in Trust to pay themselves and all the rest of his Creditors, except *Ford* the Petitioner. But the Trustees declined to act under this Assignment. He executed another, on the 9th of *June* 1755; wherein the Trustees were to pay themselves, and all the Creditors mentioned in a Schedule; (in which Schedule, the Petitioner was not included:) and in this second Assignment, a large Parcel of Ginger, as well as the Things abovementioned, were excepted.

The Petitioner insisted that he alone could chuse Assignees; since the other Creditors claimed under the Assignment.

Lord *Hardwicke* was clear, "that the "executing the Deed on the 9th of *June* "was an Act of Bankruptcy." And all that heard his Determination, were of the same Opinion: and every Body concerned acquiesced in it. Whereupon the Creditors mentioned in the Schedule, consented

to

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to wave all Benefit or Advantage under that Assignment; and all proved their Debts, in order to receive an equal Dividend with the Petitioner: And the Creditors proceeded to a Choice of new Assignees.

The Framers of this Deed executed by *Gayner*, took for granted, "that if it had been a Conveyance of all his Effects, it must be (g) bad;" and therefore they colourably (b) excepted Parts. But the Contrivance did not prevail, even so far as to bear an Argument; or to be thought by any Body worthy of a Trial.

There is a great Difference between the Conveyance of all, and of a Part, a Conveyance of a Part may be public, fair and honest; as a Trader may sell, so he may openly transfer many Kinds of Property, by way of Security. But a Conveyance of all, must either be fraudulently kept secret, or produce an immediate absolute Bankruptcy.

It has been argued, "that after a Resolution taken by a Trader, to commit an Act of Bankruptcy, the Trader so resolving to become Bankrupt, might lawfully prefer a just Creditor by conveying Part of his Effects, to satisfy that Creditor's Debt.

(g) By Lord *Mansfield*. *Bur. Rep.* 484. 2 *Bur. R.* p. 829.

(b) By Lord *Mansfield*. 2 *Bur. Rep.* 832.

It is not necessary to determine that Question, in this Cause; for here the Conveyance is of All: And therefore Lord (i) *Mansfield* would only say, that no such Proposition was yet established; much less, in the Extent whereto it had been urged; but he said (k) afterwards, that a Trader might pay a particular Creditor, or he might mortgage a Part of his Estate or Effects (at least) to a particular Creditor, provided he delivered Possession at the same Time.

L. (l) a Trader, being really indebted to W. (in about 1840 £.) sent for W; told him "he could not stand his Ground," and proposed to secure him. Accordingly, he executed a general Assignment to W. of every Thing that he had in the World: But after Payment of W's Debts, it was to be in Trust for L. himself, as to the Residue. A Defeazance in a separate Deed, was soon after executed, making the Assignment void, upon Payment of all the Money due to W. (who had been concerned with L. in circulating Notes, many of which were out standing:) But neither the Assignment nor Defeazance particularly liquidated how much Money was due from L. to W. The Deed of Assignment recited

(i) *Bur. Rep.* 477. 478.

(k) *Bur. Rep.* 484. 2 *Bur. Rep.* 831.

(l) 2 *Bur. Rep.* 827.

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L's being "obliged, upon urgent and "necessary Business, to leave *London*;" and "that he could not raise Money soon enough to answer all the Demands that "*W.* had upon him." There was no counter Part of this Deed: And the Original remained in the keeping of *L.* the Assignor. No Possession was delivered: only *L.* gave a Letter of Attorney to *B.* his own Clerk, (a Person privy to the whole,) to collect, receive, dispose, &c. the Goods still continuing in *L's* House. No Notice was given to *L's* Debtors. It was resolved by the Court of *King's Bench*, that this Deed alone was itself an Act of Bankruptcy. That it was within 21 Jac. 1. c. 19. S. 2. and, if permitted would defeat the whole System of the Bankrupt (*m*) Laws.

That the Circumstances confirmed this: particularly, there being no visible Change of Possession, a secret Transaction, no (*n*) Notice, &c.

11. *Obtaining any Protection (otherwise than being lawfully protected by Privilege of Parliament) (o).*

Procuring any Protection, not being himself privileged by Parliament, in order

(*m*) By Lord Mansfield. *Bur. Rep.* 467. 2 *Bur. Rep.* 829.

(*n*) By Lord Mansfield. 2 *Bur. Rep.* 830.

(*o*) Stat. 21 Jac. c. 19. S. 2.

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to screen his Person from Arrests, is also an Endeavour to elude the Justice of the Law (p).

But if any one be protected as the King's Servant, it does not make him Bankrupt (q).

No (r) Merchant or Trader whatsoever, within the Description of the Statutes against Bankrupts, who shall put himself into the Service of an Ambassador, or public Minister, shall have any Privilege (s).

It seems, therefore, that a Person's procuring himself the Protection of an Ambassador, or public Minister, is an Act of Bankruptcy within the above Clause of Stat.

21 Jac.

12. *Preferring unto his Majesty, or unto any of the King's Courts, any Petition or Bill against his Creditors, or any of them, thereby desiring or endeavouring to compel them to accept less than their just and principal Debts, or to procure Time or longer [more] Days of Payment, than was*

(p) 2 Black. Com. 478.

(q) Resolved in *Skin.* 21. pl. 21.

(r) Lord Chancellor *Talbot* said, that the Exception of Persons *trading* relates only to the *Servants* of Ambassadors, the Parliament never imagining that the Ministers themselves would trade, *Cas. Temp. Talb.* 282.

(s) Stat. 7 An. c. 12. §. 5.

given

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given at the Time of their original Contracts (t).

These are an Acknowledgment either of his Poverty or his Knavery (*u*).

But if the Creditors, upon Request, enlarge the Time for Payment, it does not make the Party Bankrupt (*w*).

But these Sort of Petitions or Bills will
* not now lie.

13. *Being arrested for Debt, after his Arrest, lying in Prison two Months upon that, or any other Arrest or Detention for Debt (x)*

The Inability to find Bail, in order to obtain his Liberty, argues (*y*) a strong Deficiency in his Credit, owing either to his suspected Poverty, or ill Character; and his (*z*) Neglect to do it, if able, can arise only from a fraudulent Intention; in either of which Cases it is high Time for his Creditors to look to themselves, and compel a Distribution of his Effects.

(t) Stat. 21 Jac. c. 19. S. 2.

(u) 2 Black. Com. 478.

(w) Com. Dig. 524.

* *Beaumes's Lex Mercator. rediviv. 489. in Marg.*

(x) Stat. 1 Jac. c. 15. S. 2. 21 Jac. c. 19. S. 2.

(y) So said by Mr. Just. *Wilmor*, (now L. C. J. C. B.)
2 Bur. Rep. 819.

(z) 2 Black. Com. 478, 479.

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Billinghurst (a) seems to be of Opinion, that if a Person lies in Prison two Months on an *Arrest* upon a Bond *before* the Day of *Payment*, in order to oblige him to find Sureties, according to the Custom of (b) *London*, that he will have committed the Act of Bankruptcy specified in this Clause of the Stat. of 21 Jac. But Mr. Serjeant (c) *Goodinge* seems (d) doubtful, for (says he) though it be *Debitum in præfenti*, and so a Release of *all Debts*, will (e) bar it, yet it is not properly a Debt within the Words or Intent of the Statute, for that must be such a Debt, for which a Cause of Action is given, and there can be no Cause of Action properly, till the Forfeiture, for the (f) Obligation is guided by the Condition; and the Custom of *London* will not help it; for the Custom is *not* that the Party shall be *arrested* for *Payment* of the Money, but to find better Sureties; and the Statute only intends

(a) Judges Resolutions on the Bankrupt Statutes, 96.

(b) *Ventr.* 29. 8 Rep. 126. a. *Hob.* 86.

(c) Law against Bankrupts, 26.

(d) And therefore the Serjeant submits his Reasons to the judicious Reader.

(e) *Cro. Jac.* 300. pl. 4.

(f) Lord *Hardwicke*, on another Occasion, said, the Penalty in an Obligation was *Debitum in præfenti*, and the Condition only suspended it, so that it was looked upon as a Debt from the Time of the Execution of the Bond. *Atk. Rep.* 114.

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Detention in Prison for a just (g) Debt, really due.

We entirely agree with the Serjeant, and we apprehend that the Customs of the City of *London* cannot be taken Notice of even by the superior Courts at *Westminster* judicially, unless they be properly certified by the (b) Recorder *Ore tenus*; much less then can the Commissioners of Bankrupts take Notice of them without such Certificate.

Lord (i) *Talbot* (after mentioning the (k) Laws whereby Persons having Bills, Bonds, Promissory Notes, or other personal Security for their Money payable at a future Day, are enabled to prove their Debts under Commissions of Bankrupt, and also to petition for, or join in petitioning for, the same) was of Opinion, that the Debtor's denying himself to such Persons was not an Act of Bankruptcy, it must be in order to defeat or

(g) The Serjeant conceives the Meaning of this to be for Debt originally; and not Debt by Reason of a Fine imposed, &c. for the Statute hath Respect to Creditors either by Way of Contract, Exchanging, Buying, &c. and not Fines or Amerciaments, &c. which no Way respect Trade. *Good. 25.* and *Billinghurst* seems to think that a Fine judicially imposed for some Contempt is not within the Meaning of the Acts which were made for the Relief of Creditors only, who had intrusted the Party offending. *Billingh. 95.*

(h) *Boban's Privilegia Londini*, 16, 30.

(i) 7 *Vin. Abr.* 61. pl. 14. See *Atk. Rep.* 196. pl. 102.

(k) Stat. 7 Geo. c. 31. 5 Geo. 2. c. 30. S. 22.

delay

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delay Creditors of their Debts, which could not be here, because *such Persons had then no Debt due to demand.*

If a Statute Trader owes me twenty (*or ten*) Pounds, and be arrested for it, and lie in Prison two Months, this makes him Bankrupt, which the (*l*) Serjeant thinks is *durus Sermo.*

Where Bail is really put in, the Bankruptcy only relates to the Time of (*m*) Surrender, the most substantial Trader is liable to be arrested, and the mere being arrested is no Presumption of Insolvency; the Presumption from his lying in Prison two (*n*) Months without being able to get

(*l*) *Good. 25.*

(*m*) *A.* being arrested puts in Bail, afterwards he surrenders in Discharge of his Bail, and lies above two Months in Prison, he is Bankrupt only from the Time of his Surrender, not from the Time of his Arrest. Resolved unanimously; *Tribe v Webber. Hilary 17 Geo. 2.* See S. P. in *Bur. Rep. 438.* The best Man upon the *Exchange* may be arrested and put in Bail, and afterwards become poor, and so be forced to surrender himself to save his Bail, and it would be hard to construe him Bankrupt from the first Arrest, when he was able. 2 *Show. Rep. 254.*

(*n*) Lying in Prison two *lunar* Months, makes the Party Bankrupt from the first Arrest, and although the Commission was taken out before the two Months were expired, yet he appearing to be Bankrupt by Relation to a Time before the suing it out, it was held sufficient. Adjudged by L. C. J. *Raymond. Bearwes's Lex Mercat. rediviv. 489.*

Bail

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Bail is a very strong (o) one; Bailing in order to turn the Defendant over from one Custody to another is mere Form; the Bail never (p) justify; and upon Cases of superseding Actions by Reason of the Plaintiff's not proceeding upon them within two Terms, being merely turned over from one Custody to another, is always considered as a Continuance of the same Imprisonment, and the Bankruptcy has Relation to the first (q) Arrest.

This Act of Bankruptcy seems subservient to very bad Purposes, as for Instance:

Suppose a Man of an iniquitous Disposition forms a Scheme of getting into his Possession the Estate and Effects of a third Person; he makes a false Affidavit of a considerable Debt, and procures the Defendant to be arrested on a Writ returnable the last Return of *Trinity*-Term, he contrives that the Party (who, innocent and ignorant of the Proceedings, is easily laid hold of) be taken so short a Time before the Return of the Writ that he is not able to settle his Accounts and convince his Friends of the Injustice of the Demand, so as to put in Bail to the Sheriff before all the superior Courts at *Westminster* are up

(o) By Lord *Mansfield*. 2 *Bur.* Rep. 818.

(p) By Lord *Mansfield*. *Bur.* Rep. 439.

(q) By Lord *Mansfield*, *Bur.* Rep. 439, 440. By
L. C. J. *Wilmot*, 2 *Bur.* Rep. 819.

for

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for the Vacation, being thus precluded, therefore, of justifying his Bail in Court, the Plaintiff's Attorney refuses to accept a Justification thereof at a Judges's Chambers, by this means the Defendant is *compelled* to lie in Prison till the next *Mich.* Term, in the Interim, (two Months having elapsed) the Defendant has committed an Act of Bankruptcy, by lying in Prison two Months, the perjured Plaintiff becomes now the perjured petitioning Creditor, and in order to carry on this horrid Scheme, we presume he will not find it difficult to provide one more Person as infamous as himself to swear to the Trading, (r) and the Act of Bankruptcy, and that he may have immediate Possession of the unfortunate Person's all, an Assignment is executed to him at the first Meeting which is always a private one, and in order more securely and effectually to compleat his Villainy, the Commission may be opened on a *Tuesday* whereby it cannot be publicly known till *Saturday* or *Monday* perhaps;

(r) If the Commissioners would insist on the Trading, the Act of Bankruptcy, and the petitioning Creditor's Debt, being proved by *three* different Persons, it would be a great Means towards, if not totally prevent these iniquitous Proceedings; and we apprehend the Commissioners would be justified in so doing, because it is laid down that the *Creditor* of a Bankrupt is no legal Witness. See 12 *Vin. Abr.* 11. pl. 28.

thus

thus he has a Week to confiscate the Effects; and where do you think to find any of the Parties criminally concerned by the Time a Prosecution can be commenced?

In order to remedy this Inconvenience let a Law pass that a *compulsive* Act of Bankruptcy shall not for the future be deemed a valid one, and that the Defendant instead of justifying his Bail in Court, (where it cannot be done in Time) shall within two Months after the Return of the Writ (*s*) enter into a Bond in such Sum and with two such sufficient Sureties as any of the Judges of that Court, out of which the Writ issues, shall approve of, to pay the Debt and Costs when *legally* recovered; and that in Case the Defendant shall neglect to enter into the Bond within the Time aforesaid, that such Neglect shall be an Act of Bankruptcy, and shall relate (as in other Cases) to the Time of the first Arrest; by this Means a just Debt will be secured, and an unjust one detected.

14. *Being arrested for one hundred Pounds or more, of just Debt, after such Arrest, escaping out of Prison (t).*

No Man would break Prison, that was able and desirous to procure Bail, which

(s) See Stat. 4 Geo. 3. c. 33.

(t) Stat. 21 Jac. c. 19. S. 2.

brings

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brings it within the Reason of the last Case (*u*).

Lord *Mansfield* held that a Person's being permitted, at his own Desire, to go out of the County, in which he was arrested, was not such an Escape, as that he should be thereby rendered a Bankrupt and a Criminal; for the Act clearly intended such an Escape made by a Prisoner, as shewed that he meant to run away, and thereby defeat his Creditors; but that this was not such an Escape, and that certainly a Man should not be made a Criminal, where he had not the least criminal Intention to disobey any Law whatsoever. That it was no (*w*) Escape at all in the Sense of the Act of (*x*) Parliament; he remained substantially in Custody, notwithstanding his being carried into another (*y*) County.

(*u*) 2 *Black. Com.* 479.

(*w*) *Wilmot* (L. C. J. C. B.) laid it down, that the Acts which render a Bankrupt a Criminal, must mean an Escape against the Consent of the Sheriff; a running away, and breaking his Prison. *Bur. Rep.* 440. It is observable that L. C. J. *Wilmot* cites the Clause of a Statute on this Occasion which was repealed near 50 Years before; for Lord Chancellor *Hardwicke* said, that one of the *Descriptions* to constitute a Bankruptcy, was suing out an original Writ, &c. Another, an Arrest, and procuring common or hired Bail, &c. that these being found inconvenient gave Rise to the Clause of 10 An. c. 15. See 4. "*What Acts of Bankruptcy are repealed.*" fol. 70.

(*x*) Stat. 21 Jac. c. 19. S. 2.

(*y*) *Bur. Rep.* 439.

15. *Paying to the petitioning (x) Creditor, or delivering to him Goods or Security for his Debt, whereby he shall privately have more in the Pound, than the other Creditors (y).*

Nothing can explain this Act of Bankruptcy better than the Legislature has in the Preamble of the above Clause of the Statute, the Words are :

“ Whereas Commissions of Bankrupt are frequently taken out by Persons who by Means of such Commissions (on a Composition proposed by the Bankrupts) and on Promise not to execute the same, prevail with and extort from the Bankrupt their whole Debts, or much greater Part thereof than such Bankrupts pay to their [other] Creditors, or otherwise get from such Bank-

(x) And the Receipt of such Goods or other Satisfaction, shall be a Forfeiture as well of his whole Debt, as of the whole he shall have received, and the same shall be paid back and delivered up, or the full Value thereof, to be divided amongst the other Creditors ; and such Commission shall be superseded ; and it shall be lawful for the Lord Chancellor to award to any Creditor petitioning another Commission. Stat. 5 Geo. 2. c. 30. S. 24. This Provision was to prevent knavish Combinations between the Creditors and Bankrupt, in order to obtain the Benefit of a Commission. 2 Black. Com. 480.

(y) Stat. 5 Geo. 2. c. 30. S. 24.

rupts

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rupts Goods or other real or personal Security, which is contrary to the true Intent and Meaning of the several Statutes made concerning Bankrupts, which said Statutes intend, that all such Bankrupt's Creditors shall be on an equal Foot, and not one preferred before another, or paid more than another, in Respect of his or her Debt (z)."

16. *Neglecting to make Satisfaction for any just Debt to the Amount of one hundred Pounds, within two Months after Service of legal Process, for such Debt, upon any Trader having Privilege of Parliament (a).*

Hear the Legislature's Reasons for declaring this to be an Act of Bankruptcy, viz. "To (b) support the Honor and Dignity of Parliament, and good Faith and Credit in commerical Dealings which require that in Cases of Bankruptcy the Laws should have their due Course, and that no Merchants, Bankers, Brokers, Factors, Scriveners, or Traders within the Description of the Statutes relating to Bankrupts, having Privilege of Parliament, in Case of actual Insolvency, should, by any Privilege whatever, be

(z) Preamble to Stat. 5 Geo. 2. c. 30. S. 24.

(a) Stat. 4 Geo. 3. c. 33. S. 1.

(b) The Declaration of Parliament in the Preamble to Stat. 4 Geo. 3. c. 33. S. 1.

exempted,

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exempted, from doing equal Justice to all their Creditors."

But in order to make this a perfect and compleat Act of Bankruptcy it is necessary for a Creditor (c) to make and file on Record in one of the Courts at *Westminster*, an Affidavit that the Debt is justly due to him, and that his Debtor, as he verily believes, is a Merchant, &c. within the Description of the Statutes relating to Bankrupts (d).

3. *What is Evidence of Acts of Bankruptcy.*

A Man's giving Money for Notice when a Writ should come to the Sheriff's Office against him is no Proof of an Act of Bankruptcy, for he may do it to prevent his Credit being blown (e).

A Man cannot be an Evidence to prove an Act of Bankruptcy committed by himself (f); but may be admitted to give Evidence as to the Time of the Act of Bankruptcy (g), his Confession to a third Person, that

(c) For the Sufficiency of his Demand for this Purpose, see "*Petitioning Creditor's Debt.*" fol. 71.

(d) Stat. 4 Geo. 3. c. 33. S. 1.

(e) So said by *Fortescue* Just. at *Hereford* Assizes, 4 Geo. 2.

(f) So said by Lord *Hardwicke* Ch. Just. in *Evans v Gold. Hil.* 8 Geo. 2. 2 *Str.* 829. 12 *Vin. Abr.* 11. pl. 28. S. P.

(g) By Lord *Raymond* Ch. Just. 12 *Vin. Abr.* 28.

he

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he had gone out of the Way, to avoid being arrested, is Evidence (b).

A Creditor of the Party is no legal (i) Witness to prove either the Act of Bankruptcy or the Trading. For more of Evidence, see "The Appendix."

4. *What Acts of Bankruptcy are repealed.*

The following (k) Acts of Bankruptcy are (l) repealed, viz. Being indebted in 100*l.* or more, and not paying or compounding for the same, within six Months

(b) *Evans v Gold.*

(i) See our Note (r) in fol. 64.

(k) They were Acts of Bankruptcy by Stat. 21 Jac. c. 19.

(l) By Stat. 10 An. c. 15. S. 1. Because it had been found by Experience (says the Preamble to this Statute) that many and great Mischiefs and Inconveniences had happened, especially of late to Trade and Credit in general, by Reason of the said Descriptions of a Bankrupt. Lord *Hardwicke* doubted whether this Statute intended any more than to repeal some Part of the Statute of 21 Jac. which constituted an Act of Bankruptcy; and not the Description of the Trade or Occupation, of the Person against whom the Commission issued; and that as all the Bankrupt Acts had the Description of using the Trade of Merchandize, and getting his Living *by buying and selling*, if the Construction that Stat. 10 An. repealed the Description of the Trade of the Party, should prevail, the Description of a Bankrupt, by the Expression of *buying and selling*, was as much repealed as the other. Consider (continued Lord *Hardwicke*) how much is recited by this Statute, not the whole Description of a Bankrupt, or the general or common Qualifications of the Person of a Bankrupt, or his buying and selling, &c. If such
next

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next after the same grew due, and the Debtor arrested for the same, or within * six Months after an original Writ sued out to recover the said Debt, and Notice thereof given to the Party or left for him in Writing, &c. at his House or last Place of Abode; or being arrested for 100*l.* or more of just Debts, at any Time after such Arrest, procuring his Enlargement by putting in common or hired (*m*) Bail.

3. The petitioning † Creditor's Debt.

No Commission of Bankrupt, (to prevent the taking them out (*n*) maliciously) shall

a Construction was right, then all the other Acts of Parliament would be repealed. It is only *particular Acts of Bankruptcy*, which are made void, and not the Qualification of the Person; and he had no Doubt himself, but that the Construction he had put upon this repealing Statute, was the proper and only safe Construction. *Atk. Rep.* 142.

* This Act of Bankruptcy is now revived again, as to Members of Parliament, except only that it is *two* and not six Months.

(*m*) It is observable that Lord Chief Justice *Wilmot* cited this Clause in the Court of *King's Bench* so late as *Hilary Term* 31 *Geo. 2.* *Bur. Rep.* 440. when it had then been repealed near *Fifty Years*.

† Lord *Hardwicke* said, that a Creditor was not wantonly to take out a Commission against a Debtor, unless it was upon a plain and express Act of Bankruptcy, *Atk. Rep.* 139. and that he had not the same Election as a common Creditor, for that if he was to proceed at Law, it would supersede the Commission. *Atk. Rep.* 154. pl. 93.

(*n*) Preamble to Stat. 5 *Geo. 2. c. 30. S. 23. 2 Black. Com.* 480.

issue,

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issue, unless the single Debt of one Creditor, or of more Persons, being Partners, petitioning for the same amounts to one hundred Pounds or unless the Debt of two Creditors petitioning, amount to one hundred and fifty Pounds, or unless the Debt of *more* Creditors petitioning amount to two hundred Pounds; and the Creditors petitioning shall, before the same be granted, make Affidavit, or solemn Affirmation, before one of the Masters in *Chancery*, of the Truth of their Debts (o).

The Law does not look upon Persons, whose Debts amount to less, to be Traders considerable enough, either to enjoy the Benefit of the Statutes themselves, or to intitle the Creditors, for the Benefit of public Commerce, to demand the Distribution of their Effects (p).

The petitioning Creditor's Debt must be a legal one, and therefore an Assignee (q) of a Bond cannot obtain a Commission; nor must it be of above (r) six Years standing (s).

(o) Stat. 5 Geo. 2. c. 30. S. 23.

(p) 2 Black. Com. 475.

(q) 2 Stra. 899. 2 Kel. 6. pl. 8. Wil. Rep. 783. Sel. Cas. of Evid. 161.

(r) Sel. Cas. of Evid. 148. 2 Stra. 746. contrary, are not Law.

(s) *Moseley* 37.

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The Bankrupt petitioned to supersede the Commission against him, because the petitioning Creditor's Debt arose only from a Note that had been indorsed to him after the Petitioner had committed an Act of Bankruptcy; but as it appeared that the Note itself was given *before* (t) any Act of Bankruptcy, though (u) indorsed *after*, Lord Chancellor *Hardwicke* thought it a Debt upon which the petitioning Creditor might take out the Commission (w).

The Executor of a Bankrupt, unless the Commission against his Testator has been superseded, cannot take out a Commission of Bankruptcy for a Debt due to the Testator, for such Debt vested in his Assignees, and consequently the Executor not entitled

(t) The Debt of the petitioning Creditor being a Note from the Bankrupt *after* he became Bankrupt, Lord *Raymond* was of Opinion it was a void Commission, the Acts of a Man *after* an Act of Bankruptcy being void. 2 *Stra.* 744. *Cas. Temp. Talb.* 243, 244. *Sel. Cas. of Evid.* 147. But where *A.* had 100l. owing on simple Contract *before* an Act of Bankruptcy, and one is afterwards secretly committed, and *then* a Bond taken, it shall not so far extinguish the simple Contract, as to deprive the Creditor of petitioning for a Commission. 2 *Stra.* 1042.

(u) Lord Chancellor *Macclesfield* said, it might be a Question whether Indorsee would be entitled to a Commission, as not being capable of taking out a Commission, at the Time of the Party's becoming Bankrupt. *Wil. Rep.* 783. pl. 229.

(w) *Atk. Rep.* 73. pl. 27. id. 126. pl. 70.

at Law, to be the petitioning Creditor (*).

A Petition to supersede the Commission on a Suggestion that Mr. *Alsworth's* Debt was not of such a Nature, as entitled him under the Bankrupt Acts to sue out a Commission. Mr. *Alsworth* treated with the Petitioner for the Purchase of the Equity of Redemption of his Estate, which was in Mortgage to one Mr. *Field*. Four hundred pounds was the Price settled for the Purchase, Articles were signed and Mr. *Alsworth* paid *Hylliard* 25*l.* 1*s.* to clear off the Mortgage, and was to pay him 150*l.* more on the Execution of the Conveyances. *Hylliard* refused to compleat the Purchase, or to pay off the Mortgage. On this Mr. *Alsworth* brought an Action for 25*l.* 1*s.* against *Hylliard*, who was carried to Gaol, where he lay two Months; and thereupon Mr. *Alsworth* took out a Commission of Bankruptcy, and *Hylliard* was declared a Bankrupt on this Act of Bankruptcy.

For the Petitioner it was insisted, that this was not such a Debt as was within the Meaning of the Bankrupt Acts. That an *indebitatus assumpsit* could not be maintained, for the 250*l.* was a Breach of Trust only, and not a Debt.

The other side insisted it was a Debt, and Money had and received to the Bank-

(*) By Lord Hardwicke. *Aik. Rep.* 100. pl. 49.

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rupt's Use, and an Action therefore maintainable as for his Debt.

It was urged in the Reply, that there was no Pretence that the 150*l.* or one Penny thereof, was ever tendered to *Hylliard*, but was told that he must either repay the 250*l.* 1*s.* or go to Gaol. No one Creditor appeared under the Commission; by that Means Mr. *Alfworth* has, by Virtue of chusing himself Assignee, got into his Possession all *Hylliard's* Effects, although 'tis sworn he does not owe any Person besides a Farthing.

Lord Chancellor *Hardwicke* doubted extremely whether a Commission could be taken out on such a Contract, for the Remedy should have been a Bill for Performance of the Contract, and no Action could, in Strictness of Law, be maintained. But if it stood simply upon this Footing he should not have superseded the Commission but left the Bankrupt to an Action at Law to try the Bankruptcy. But as it came out now that Mr. *Alfworth* has, since the issuing of the Commission, taken an Assignment of this very Mortgage, he would not suffer the Commission to go on; for as standing in the Place of the Mortgagee, he might hold till redeemed, and likewise compel a Performance of the Contract, or *Hylliard* to refund the 251*l.* 1*s.* The Receipt given by *Hylliard*, is nothing but an Acknowledg-

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ment of receiving 251*l.* 1*s.* in Part of the Purchase Money. No Action in this Case could be maintained, and therefore the very Foundation for the Commission failed; and Mr. *Alsworth* has, by taking an Assignment of the Mortgage, got the Security of the Mortgage for the Money he has paid. The Affidavits on both Sides swear, that the petitioning Creditor said, either pay me back the Money, or convey to me the Equity of Redemption, and not a Word of the petitioning Creditor's offering to pay the 150*l.* the Remainder of the Purchase Money.

The Commission, therefore, was superseded, and the petitioning Creditor ordered to pay the Cost; for any Expressions of *Hylliard's*, that he was able to live in Gaol, or any where else, and such like, proceeded from this ill Usage, and will not forfeit his Costs (y).

It appearing on a Trial at Law in the Court of *Common Pleas*, in an Action of *Trover* brought by a Bankrupt against his Assignee, that the Debt upon which the Commission was taken out was due from the Partnership. Lord Chief Justice *Willes* doubted whether the Commission issued regularly; and directed a Verdict to be found for the Plaintiff, subject to the Opinion of the Court of *Common Pleas*; and

(y) *Atk. Rep.* 147. pl. 87.

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after hearing Counsel on the Point reserved; the Court of *Common Pleas* pronounced (z) Judgment, and declared the Commission issued regularly (a).

An Arbitration Bond is a Debt at Law, and binds the Parties till set (b) aside for Corruption or Partiality, and is also a sufficient Debt to support (c) Commissions of Bankruptcy.

Indorsee of Notes of one who afterwards becomes Bankrupt, purchased in at an under Value, as at ten Shillings in the Pound, petitioned for a Commission against the Drawer. And Lord Chancellor *Macclesfield* held, that he was plainly a Creditor, just as if the Drawees had paid the Bankrupt an under Rate for them; and his Lordship

(z) Lord Chancellor *Hardwicke* said, that when this Case came originally before him, he thought it a pretty new one; a Commission of Bankrupt taken out against one Partner for a Partnership Debt, without joining the other Partners in the Commission; but whatever Doubts he might have had before, it was now established to be Law, on the unanimous Opinion of the Court of *Common Pleas*, that a *Commission of Bankrupt* may issue against one Partner only for a joint Debt; though to be sure an Action at Law could not be maintained against one Partner, unless the other two were joined in it. *Atk. Rep.* 134.

(a) *Atk. Rep.* 133, 134.

(b) And a Bill brought for that Purpose cannot be a Foundation to suspend it, for if it was, a Person then has Nothing more to do but to file such a Bill, and frustrate the Effect of the Award. *Atk. Rep.* 241.

(c) *Atk. Rep.* 241.

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held, that though they had been given without any (*d*) Consideration, yet they are now his Debts, and the legal Right vested in the (*e*) Indorsee.

An Order was made, that a Solicitor's Bill should be taxed by a Master, and that all Proceedings at Law should, in the mean Time, be stayed; and whilst the Bill was under Taxation, the Solicitor sues out a Commission of Bankruptcy against his Client; and on a Petition to supersede the Commission, this was adjudged to be no Contempt, nor a sufficient Cause to supersede the Commission, because the Order of Reference extended only to bringing Actions, and to common and ordinary (*f*) Proceedings.

Lord Chancellor (*g*) *Talbot* said, that where a Debt was due to the Wife as Administratrix, the Husband alone could not make Oath of this as a Debt due to himself in order for a Commission of Bankrupt.

Toms and *Allen* having recovered Judgment against one *Barnaby*, he was surrendered by his Bail, and then charged in Ex-

(*d*) But the Commissioners will not suffer such Creditor at this Day to prove his Debt under a Commission, unless he sets out and swears to the Consideration of the Indorsement.

(*e*) *Wil. Rep.* 782.

(*f*) *Moseley* 27.

(*g*) 7 *Vin. Abr.* 67. pl. 10;

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Ch. I. Petitioning Creditor's Debt. 79

ecution, after which the Plaintiffs in that Action preferred their Petition to the Lord Chancellor (*b*) *King*, as Creditors, for a Commission of Bankruptcy, which issued, but was superseded upon the Bankrupt's Petition; the Chancellor being of Opinion, that the Body of the Debtor being in Execution, it was a Satisfaction of the Debt in Point of Law, so that they were not Creditors who could petition.

Persons who have Bills, Bonds, Promissory Notes, or other personal Security for their Money, payable at a future Day, who by Stat. 7 Geo. c. 31. are enabled to come in as Creditors, and allowed to discount such Debts, allowing 5 *per Cent*, &c. (*i*) may (though disabled by the Statute) petition for, or join with others in petitioning for, Commission of Bankruptcy.

If *A.* being a Trader, becomes indebted to *B.* in 100*l.* and then he quits his Trade, and afterwards becomes indebted to *B.* in 100*l.* more, *A.* afterwards pays to *B.* 100*l.* without saying upon what Account. *Holt* (*k*) Chief Justice said, that since so much in Quantity was paid to *B.* as was due to him from *A.* when *A.* was capable of being a Bankrupt, it would be too rigorous to

(*b*) *Stra.* 653. Read. on Stat. Law, 189.

(*i*) Stat. 5 Geo. 2. c. 30. S. 22.

(*k*) Lord *Raym.* 287. 12 Mod. 159. *Comb.* 463.

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admit *B.* to sue out a Commission of Bankruptcy for the old Debt of 100*l.* But to this Point he said, he would not give an absolute Opinion, and none of the other Judges contradicted it.

and their House Door rupt, shall any (his Wife of his shall Co their on Bo in De (l) S (m) for the Goods 247. p (u) (o) (p) S. 19.

CHAP.

C H A P. II.

The Seizure of the Bankrupt's Estate,
and Summonee for his Surrender.

THE Commissioners, (*l*) or any other Person, or Officer by them deputed and appointed, by their Warrant under their Hands and Seals may break open the House (*m*), Chambers, Shops, Warehouses, Doors, Trunks, or Chests of the Bankrupt, where any of his Goods or Estate shall be or reputed to be; and seize (*n*) any of his Goods, Wares, Merchandizes, (his necessary wearing Apparel or of his Wife or Children only excepted) and any of his Books, Papers, and Writings, which shall be in his Custody or Possession.

Commissioners (*o*) of Bankrupts issued their Warrant to seize Goods of a Bankrupt on Board (*p*) twelve Ships in *Topsham Bay* in *Devonshire*, the Goods were consigned to

(*l*) Stat. 21 Jac. c. 19. S. 8.

(*m*) But they cannot break open an House to search for the Bankrupt's Goods, unless it be the Bankrupt's Goods in the House of the Bankrupt. 2 *Show. Rep.* 247. pl. 248.

(*n*) Stat. 5 Geo. 2. c. 30. S. 14.

(*o*) 2 Eq. Cas. Abr. 98. pl. 1.

(*p*) Two Ships. *Mol. de Jure maritimo*. B. 2. c. 3. S. 19.

82 *Seizure of Bankrupt's Estate. Ch. 2.*

Persons in *Holland*, who had not paid the Bankrupt for them; the Masters refused to deliver the Goods, notwithstanding the Warrant; and this occasioned the Commissioners themselves to demand the Goods in Person, which were still refused.

Sir Peter (q) King moved for an Order upon the Masters for their Contempt. The Court of *Chancery*, at first greatly doubted whether they could make an Order in Aid and Assistance of the Warrant of the Commissioners of Bankrupt, the Statute having vested a large Power in them; besides, the Persons to whom the Goods were consigned, would be indebted to the Creditors of the Bankrupt, which Creditors might recover by the Law of *Holland*. But Sir Peter King said they would rather lose the Goods, than follow them into *Holland*.

Lord Chancellor Cowper. Their refusing to deliver the Goods upon the Warrant, is no Contempt to this Court, though the Commissioners act under a Commission under the Broad Seal. I remember the Queen was applied to, to lay an Embargo upon a Ship in the like Case, but denied; because an Embargo would have affected other Goods in the Ship. The Masters in the present Case have some Color to detain the Goods; for upon a Delivery of them, they may be disappointed of Freight, and

(q) *Mol. de Jur. Marit.* 353.

the

Ch. 2. Seizure of Bankrupt's Estate. 83

the Assignees of the Commission must stand in the same Place as the Bankrupt, and be subject to his Contract. But however, an Order was made upon the Masters to deliver the Goods upon Payment of the Freight Money, and the Masters to be indemnified by the Creditors, against a Bill of Lading, which was sent to the Consignees.

H. a Silkman and *F.* a Dealer in Coals, were Partners in both Trades; they afterwards dissolved the Partnership, and *F.* gave *H.* a Release of all Demands, and took upon him the Payment of the Debts due from the Coal Trade, and *H.* the Debts from the Silk Trade, and the respective Debts were assigned accordingly; *H.* died and a Commission was taken out against *F.* and the Messenger attempting to seize the Effects of *H.* in the Hands of his Representative was opposed and turned out of Possession. Lord (*r*) *Hardwicke* was of Opinion that by Virtue of the Release from *F.* to *H.* the whole Property of the silk Trade from the Dissolution of the Partnership vested in *H.* and that the Assignee could stand in no better Light than *F.* himself, who had relinquished all his Claim, and therefore that the Goods of *H.* ought (*s*)

(*r*) *Atk. Rep.* 136. pl. 77.

(*s*) But though the taking of these Goods by the Messenger was illegal, yet the turning him out of Pos-

84 **Summonce for Surrender** Ch. 2.

not to have been seized at all under the Commission against *F*.

The (*t*) Commissioners are to appoint within the forty (*u*) two Days for the Bankrupt to surrender and conform, not less than three several Meetings, the last of which shall be on the forty (*w*) second Day.

session by Force could not be justified, for the Owner of the Goods ought to have asserted his Right by a due Course of Law. By Lord *Hardwicke*. *Atk. Rep.*

137.

(*t*) Stat. 5 Geo. 2. c. 30. S. 2.

(*u*) Bankrupt who does not with 42 Days after Notice in Writing of a Commission being awarded and issued against him, such Notice being left at his usual Place of Abode, or of personal Service in Case he be then in Prison, and Notice given in the *London Gazette* that such Commission is issued, and of the Time and Place of the Meeting of the Commissioners therein named, surrender himself to them, and sign or subscribe such Surrender, and submit to be examined from Time to Time upon Oath, or being of the People called *Quakers*, upon solemn Affirmation before the Commissioners, and in all Things conform to the several Statutes made and now in Force concerning Bankrupts, shall suffer as a Felon without Benefit of Clergy. Stat. 5 Geo. 2. c. 30. S. 1.

(*w*) The Great Seal may enlarge the Bankrupt's Time for surrendering himself and disclosing and discovering his Effects to 50 Days from the said forty-second Day, so as the Order be made six Days before the Day of Surrender and Discovery. Stat. 5 Geo. 2. c. 30. S. 3.

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Ch.2. Summonce for Surrender. 85

Upon (x) Certificate under the Hands and Seals of the Commissioners that a Commission is issued, and the Party proved before them Bankrupt, any Justice of the superior (y) Courts in *Westminster Hall*, or any Justice of the Peace shall, upon Application, grant his Warrant under his Hand and Seal for apprehending the Bankrupt and committing him to (z) Goal, there to remain until he be removed by Warrant under the Hands and Seals of the Commissioners, in order for his Examination and Discovery.

A Commission of Bankruptcy being taken out, and the Party declared Bankrupt; after the three Sitzings at *Guild-hall* had been advertized in the *Gazette* for the Bankrupt to surrender, and to discover his Estate and Effects, the Commissioners in the intermediate Time having met, and examined Witnesses upon Interrogatories, and finding upon such Examination, that the Bankrupt had been removing and concealing his Effects, and fraudulently conveying his real Estate, in order to defraud

(x) Stat. 5 Geo. 2. c. 30. S. 14.

(y) Viz. *King's Bench, Common Pleas, and Exchequer.*

(z) The Goaler or Keeper to whose Custody the Bankrupt shall be committed is to receive him, and forthwith to give Notice to the Commissioners thereof.
Stat. 5 Geo 2. c. 30. S. 14.

his

86 *Summonce for Surrender.* Ch. 2.

his Creditors, thought proper to summon him by their Messenger to appear before them the next Morning; and it appearing that he had been served with the Summonee, and refused to attend, the Commissioners in Pursuance of the above Clause certified this Fact to Mr. Justice *Chapple*, who committed him to *Newgate*, and upon the Keeper of *Newgate's* sending a written Notice to the Commissioners, that he had the Bankrupt in his Custody, they immediately sent their own Warrant to bring him before them, and upon his refusing to take the Oath in order to his being examined, they re-committed him to *Newgate*.

The Bankrupt preferred his Petition to Lord Chancellor *Hardwicke*, suggesting that he had been illegally committed to *Newgate*, and prayed that he might be discharged from his Confinement.

Lord Chancellor: As to the Legality of the Commissioners Certificate to Mr. Justice *Chapple*, and Proceedings upon it, 'tis an intire new Question, and quite a new Case; and therefore at the first Opening of it I had great Doubt, whether I could properly determine the Legality of the Commitment, as an *babeas Corpus* might have been sued out, and have been decided by the Judges of the Common Law, which is the ready Way.

Ch. 2. Summonce for Surrender. 87

Way. But I do remember a Case of *John Ward* before Lord Chancellor *King*, not unlike the present, where he determined a Commitment by Commissioners of Bankrupt to be justifiable, after he had taken some Time to consider of it. I think therefore the Certificate which has been made in this Case is pursuant to the Powers given to Commissioners under the Statutes of Bankruptcy, for by the old Acts, which considered him as a Criminal and fraudulent Person, Commissioners "had full power and Authority to take by their Discretions such Order and Direction with the Body and Bodies of a Bankrupt, where-soever he or she may be had, either in his House, Sanctuary, or elsewhere, as well by Imprisonment of his or her Body or Bodies, as also with all his or her Lands, &c. and also with his or her Money, Goods, Chattels, Wares, Merchandizes, and Debts whatsoever. 13 Eliz. c. 7." The Rigor of the Law indeed, as to his Person, is taken away, and yet the Power of examining still remains; but though the Severity of the old Acts is mitigated, yet a greater Punishment is inflicted; for a Bankrupt, if he does not surrender, is now guilty of Felony without Benefit of Clergy, but then he has to the last Day to conform himself to this and the other Acts. The 5 Geo. 2. appoints three Sitzings at *Guild hall*

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ball in the Space of forty-two Days for particular Purposes; but would it not be a very great Absurdity, if the Bankrupt might make use of the forty-two Days to embezzle his Effects and to quit the Kingdom; and that the Commissioners, though apprized of his Intention, should have no Power to prevent it, by summoning him before them in the intermediate Time, and committing him, if he refuses to be examined?

It has been objected by the Bankrupt's Counsel, that the Commissioners have made the Certificate variant from the Summonce, for the latter is general for the Bankrupt to attend, and the Certificate mentions the Cause for which they summoned him, namely, to examine him upon an Embezzlement of his Effects. But there is no Weight in this Objection; for the Commissioners were not under any Necessity of mentioning the Cause of summoning the Bankrupt in their Certificate, because the Judge, upon their barely certifying that he refused to attend, is obliged to commit him. As in this Case the Commissioners had full Evidence of the Bankrupt's Intention to secrete his Effects, and to make fraudulent Assignments of them, they (a)

(a) *Francis Warden*, Esq. one of the present Commissioners of Bankrupts, was an *acting* one under this Commission.

have

Ch. 2. *Summonce for Surrender.* 89

have done rightly, wisely and discreetly in the Method they have taken to prevent it, by summoning the Bankrupt, and committing him for disobeying their Summons. I do not say this to encourage Commissioners of Bankrupt to use this Power wantonly, but upon such Circumstances as appear in the present Case, I am of Opinion it was very properly exercised, and the Proviso which immediately follows the Clause that relates to the Certificate of Commissioner's of Bankrupt to the Judges, &c. in the 5 Geo. 2. makes it extremely clear, that the Commissioners at their Discretion may examine a Bankrupt in the intermediate Time, between his being declared a Bankrupt and the Sitzings at *Guildhall*.

For the Words are, Provided (*b*) always, that if any such Person or Persons so apprehended and taken, shall within the Time or Times allowed by this Act for that Purpose, submit to be examined, and in all Things conform as if he, she, or they had surrendered, as by this Act such Bankrupt or Bankrupts is or are required, that then such Person so submitting and conforming shall have and receive the Benefit of this Act, to all Intents and Purposes, as if he, she, or they, had voluntarily come

(*b*) Stat. 5 Geo. 2. c. 30. S. 15.

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in and surrendered himself, herself, or themselves; any thing therein contained to the contrary thereof in any wise notwithstanding. (c)

(c) *Att. Rep.* 240, pl. 131. 2 Eq. Cas. Abr. 99, pl. 8.

CHAP.

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C H A P. III.

The Proof of Debts.

LORD (*d*) *Hardwicke* often said, that the Aim of the Legislature in all Statutes concerning Bankrupts was, that the Creditors should have an equal Proportion of the Bankrupt's Effects as far as possible; Lord (*e*) *Mansfield* also expressed himself to the same Purpose on a like Occasion.

Creditors may come in within four Months after issuing of the Commission, and until a Dividend be made (*f*); and shall be at Liberty to prove (*g*) their Debts under the Commission, without paying any Contribution or Sum of Money whatsoever, for or on Account of such Debt (*h*).

The common Proof before the Commissioners is the (*i*) Oath of the Creditor,

(*d*) *Atk. Rep.* 183. 229. 233.

(*e*) *Bur. Rep.* 476, 477.

(*f*) *Stat.* 1 *Jac.* c. 15. S. 4.

(*g*) Persons are considered only as Creditors at large of a Bankrupt, till they have proved their Debts under the Commission. *Atk. Rep.* 153. pl. 92.

(*h*) *Stat.* 5 *Geo.* 2. c. 30. S. 25.

(*i*) The Commissioners may examine upon Oath, or otherwise, for the Discovery of the Truth and Certainty of Debts, for which the Creditors seek Relief by the Commission. *Stat.* 21 *Jac.* c. 19. S. 9. And if such Creditors perjure themselves either *viva Voce* which

which is binding unless the Bankrupt, or the other Creditors object to it, and then it is examined, and an Appeal (*k*) lies from the Determination of the Commissioners to the Great Seal by Petition, but if no Objection is made in a reasonable Time, such Proof by Oath is (*l*) conclusive.

Every Creditor is to swear whether he has a Security or not; if he has a Security, and insists upon proving his Debt, he must deliver up the Security for the Benefit of the Creditors at (*m*) large, be they Mortgages or (*n*) Pledges.

If a Man trade with a Bankrupt between the Act of Bankruptcy and the Commission sued out, whether by Delivery of Goods, or Payment of Money, without Notice of the

before the Commissioners, or by Affidavit or Affirmation exhibited unto them, they shall suffer the Penalties inflicted by Stat. 5 El. c. 9. S. 3. & Stat. 2 Geo. 2. c. 25. S. 2. [perpetuated by 9 Geo. 2. c. 18.] against wilful Perjury; and shall be liable to pay double the Sum so sworn or affirmed to be due. Stat. 5 Geo. 2. c. 30. S. 29.

(*k*) A Creditor offered Proof of his Debt, which the Commissioners disallowed, whereupon Application was made to the Court, who at first declined to meddle with it, but at length consented to hear the Proof. Chanc. Caf. 275.

(*l*) By Hardwicke Chancellor. Atk. Rep. 77.

(*m*) It seems that it should be Creditors under the Commission, not Creditors at large, because Lord Hardwicke made a Distinction between such Creditors, See fol. 91. Note (*g*).

(*n*) Atk. Rep. 105.

Act

Act of Bankruptcy, the Bankrupt keeping open Trade, such Person shall come in as a Creditor for such Goods or Money (o).

As to Goods *sold* to a Bankrupt, or Money *received* of him between the Act of Bankruptcy, and the Commission sued out, without Notice of the Act of Bankruptcy, the Bankrupt keeping open Trade; Lord Mansfield (p) said, that till the making of Stat. 19 Geo. 2. c. 32. if the Bankrupt had *bonâ Fide* bought Goods, or negotiated a Bill of Exchange; and thereupon, or otherwise in the Course of Trade, *paid* Money to a fair Creditor, *after* he himself had committed a *secret* Act of Bankruptcy, such *bonâ Fide* Creditor was liable to *refund* the Money to the Assignees, after a Commission and Assignment; and the Payment *though* really and *bonâ Fide* made to the Creditor, was avoided and defeated by the *secret* Act of Bankruptcy; but that this was remedied by the above Statute, in Case *no Notice* was had by the Creditor, (prior to his receiving the Debt,) "That his Debtor was become "Bankrupt, or was in insolvent Circumstances."

The Legislature (q) has declared, that previous to the Year 1746, if a *bonâ Fide*

(o) 7 Vin. Abr. 69. pl. 6. so determined in 1716.

(p) Bur. Rep. 32.

(q) In the Preamble to Stat. 19 Geo. 2. c. 32. S. 1. the Parliament declared, that many Persons within
Creditor

Creditor of a Bankrupt had received his Debt of such Bankrupt, between the Act of Bankruptcy and the Commission, though such Creditor had no Notice of the Act of Bankruptcy, yet *such Payment was void*, and the Creditor was *obliged to refund*.

The Law as to the Point of the Debtor of a Bankrupt's refunding seems to stand thus, according to Reporters of great Authority in *Westminster Hall*.

A Bankrupt *may receive his Debts after an Act of Bankruptcy committed*, from such of his Debtors as *do not know* him to be

the Description of, and liable to the Statutes concerning Bankrupts, frequently committed secret Acts of Bankruptcy unknown to their Creditors and other Persons, with whom, in the Course of Trade, they had Dealings and Transactions; and after the committing thereof, continued to appear publicly, and carried on their Trade and Dealings, by buying and selling of Goods and Merchandizes, drawing, accepting, and negotiating Bills of Exchange, and paying and receiving Money on Account thereof, in the usual Way of Trade, and in the same open and public Manner as if they had been solvent Persons, and had not become Bankrupts: And that the committing such secret Acts of Bankruptcy to avoid and defeat Payments, really and *bonâ Fide* made in the Cases, and under the Circumstances above mentioned, where the Persons receiving the same had not Notice of, or were privy to such Persons having committed any Act of Bankruptcy, would be a great Discouragement to Trade and Commerce, and a Prejudice to Credit in general.

Bank-

Bankrupt (*r*), and the *Payment* would be good, and a Discharge against the Commissioners and the Assignees (*s*); so, if the Party was compelled to pay by Suit (*t*); and formerly, till the Commission sued, the Debtor ought not to repay, though he had Notice of the Bankruptcy (*u*).

Lord (*w*) *Hardwicke* observed that the Relation of Acts of Bankruptcy was as hard a Case as any in the Law, because this Relation might go a great Way back, and over-reach all Transactions without Regard to their being fair (*x*) or fraudulent; that it held in Sales of Goods, and Payment of Money, and overturned not only Contracts but Acts upon Record, and legal Acts, as Judgments, and Executions (*y*) executed, where these Acts happened after the Act of Bankruptcy committed.

(*r*) Stat. 1 Jac. c. 15. S. 14. 2 *Show. Rep.* 522. 7 *Vin. Abr.* 108. 2 *Eq. Cas. Abr.* 396. pl. 3. Lord *Hardwicke* said, that this Statute did not indemnify a Creditor of Bankrupt, unless it appeared that he had no Notice of the Bankruptcy at the Time of receiving his Money; and that the Courts of Law had considered this an hard Case, and always required a strict Proof of Notice. *Atk. Rep.* 157.

(*s*) 3 *Keb. Rep.* 190. pl. 38.

(*t*) 3 *Keb. Rep.* 232. *Vern.* 94. 2 *Ventr.* 358.

(*u*) 3 *Keb. Rep.* 232. *Freem.* 349. pl. 435.

(*w*) *Atk. Rep.* 127.

(*x*) Doctor *Blackstone's* Opinion on this Matter seems rather injudicious; for he says that the Intention of this relative Power is only to reach fraudulent Transactions, and not to distress the fair Trader. 2 *Black. Com.* 486.

(*y*) See *Bur. Rep.* 31. &c.

He observed further that it was said Fictions of Law should not enure to the Prejudice of any Body, but were invented to support Rights, and to be sure (he said) that was the Rule, but that this Case was taken out of another general Rule, which had been adhered to for the Sake of public Utility, viz. That it was (z) better a private Mischief should ensue, than a general Inconvenience; but that since Trade had encreased, the Mischiefs and Inconveniencies had multiplied, and therefore the above Stat. 19 Geo. 2. c. 32. was made, and one of the principal Cases provided for by it, was the Negotiation of Bills of Exchange and though the Party might not bring himself strictly within the Act, yet if he was within the Meaning of it, the Court of Chancery would go as far as it could in Support of it.

The material Matters concerning Creditors seem reducible to the following Particulars.

1. Joint and separate Creditors.
2. Mutual Debts and Credit.
3. Interest.
4. Exhibits.
5. Claims.
6. Alphabetical Arrangement of Creditors.

(z) *Lex citius vult tolerare privatum Damnum, quam publicum Malum.* Co. Lit. 152. b.

1. Joint

Ch.3. Joint and separate Creditors. 97

1. Joint and separate Creditors, and herein of Partnership Debts.

Lord (a) *Hardwicke* said, that formerly where there were several Partners, they used to take out separate Commissions against each Partner, as well as a joint Commission; that this Practice being of late thought a very unreasonable one, as occasioning great Confusion, with Regard to Bankrupt's Effects, had been (b) discountenanced, and besides, they were generally Nothing more than a Struggle for the Assigneeship and the Clerkship.

Lord (c) *Hardwicke* said, that where there was a Creditor on Bond against two Persons jointly and severally, and both became Bankrupt, he was entitled to receive a Satisfaction out of the joint Estate, and if the joint Estate fell short, he was for the Residue entitled to a Satisfaction out of the separate Estate; but then the Court

(a) *Atk. Rep.* 138.

(b) By this Opinion of Lord Chanc. *Hardwicke*, it should seem that for the future, where there is a joint Commission depending, separate Creditors ought not to take out a separate Commission, but apply for an Order to be admitted to come in, and prove their Debts under the joint Commission, as being a Means of saving an Expence to the Creditors. By the Reporter. *Atk. Rep.* 138. See *id.* 98. pl. 46. fol. 99.

(c) *Atk. Rep.* 99. 106. pl. 57.

F

would

would put him to his (*d*) Election, and if he elected to come under the joint Estate, he would, with Respect to a Satisfaction for the Residue, be postponed (*e*) to all

(*d*) Lord *Talbot* declared, that Bond Creditors to whom the two Bankrupts were jointly and severally bound, were not entitled to have a full Satisfaction out of both at the same Time, and ordered them to make Election before they received any further Dividend. In a like Case his Lordship declared, that such Creditors were not entitled to a Satisfaction equally with other Creditors of the joint Estate, or with other Creditors of the separate at the same Time, but ordered them to make an Election, and if they elected to come upon the joint Estate, then they were not to come upon the separate Estate, till the other Creditors upon the separate Estate had been first paid. *Atk. Rep.* 99.

(*e*) Lord *Hardwicke* said, that to be sure at Law a Creditor upon a joint and several Bond may proceed against both Obligees at the same Time, till his Debt is fully satisfied, but in Bankrupt Cases the Court of *Chancery* directs an Equality of Satisfaction; consider it (said Lord *Hardwicke*) on the Footing of a joint Estate first; joint Creditors are entitled to a Satisfaction out of the joint Estate before separate Creditors, but then they have no Right to come upon the separate Estate for the Remainder of their Debts, till after separate Creditors are satisfied; what would be the Consequence, if Creditors upon joint and several Bonds should be admitted to come upon both Estates at the same Time? Why, then these Creditors would draw so much out of the separate Estate, as would be a Prejudice to other joint Creditors, who have an equal Right to come upon the separate Estate with themselves, and by that Means his Lordship should give Creditors upon joint and several Bonds a Preference to other Creditors, when the Act of Parliament

the

Ch.3. Joint and seperate Creditors. 99

the Creditors of the separate Estate. And his Lordship (*f*) said, that joint Creditors, where there were no separate, might exhaust both the joint and separate Estate, till their Debts were paid, and that the Bankrupt would not be entitled to a Shilling till the joint Creditors were fully satisfied; but that where there were separate as well as joint Creditors, though in the Case of the Bankrupts, the separate Estate should be equally applied; yet as between joint and separate Creditors it was otherwise, for the joint Estate should be applied to the Satisfaction of the joint, and the separate Estate to the Satisfaction of the separate Creditors.

Lord (*g*) *Hardwicke* said, that where there were two Persons who had been Partners, and yet the Commissions were taken out

and the Equity of the Court of *Chancery* incline that all Persons should have an equal Satisfaction. *Atk. Rep.* 99. 100. Lord *Chancellor* founded his Order upon this Reasoning, because the Bond Creditors might have brought a separate Action at Law against each of them, and might have had likewise separate Executions, but could not have levied his Debt upon both the Estates at the same Time, but only for the Deficiency, where one Estate was not sufficient to satisfy the whole. *Atk. Rep.* 106. pl. 57. By this last Reasoning his Lordship seems to maintain a contrary Doctrine to what is advanced by him in the former Part of this Note, as to the Matter at Law.

(*f*) *Atk. Rep.* 227.

(*g*) *Atk. Rep.* 98. pl. 46: See fol. 97. Note (*h*).

against them as separate Traders, their Creditors upon the joint Estate could not be admitted to prove their joint Debts under each Commission, for they had an equitable Right, in Case there should be any Surplus of the Estates of the two Bankrupts, after the separate Creditors were satisfied; and that therefore the joint Creditors must proceed in the common Course, by taking out a joint Commission.

Where *A.* lent a Sum of Money to one Partner on his own Security, and he lent the same to the Partnership Trade, and a joint Commission taken out; Lord (*b*) *Hardwicke* said, that *A.* should not come in as a Creditor upon the joint Estate of the Bankrupt (*i*) immediately and directly, with the Rest of the Partnerships Creditors, but that by Way of Circuitry he was entitled, as standing in the Place of that Partner who had paid the Money to the Use of the Partnership Trade.

Where (*k*) there were two Partners, and one had taken out more Money from the Partnership Stock than his Share amounted to, and thereby became a Debtor for so much; Lord *Talbot* was of Opinion, that the Partnership Creditor had a Right to

(*b*) *Atk. Rep.* 223. pl. 124.

(*i*) Unless such *separate* Debt had been entered in the *Partnership* Books, and then he might.

(*k*) *Atk. Rep.* 225.

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come upon the separate Estate of the Partner who was so indebted.

Two (l) Partners agreed to borrow a Sum of Money for the Use of the Partnership, but one of them only gave a Bond for securing the Payment, and the other was a Witness to it, this Money was afterwards entered in the Cash Book of the Partnership, a joint Commission was taken out against them, and the Obligee denied by the Commissioners to be admitted a Creditor; but Lord King on his Petition was of Opinion that he ought to be admitted, and directed accordingly.

Separate Creditors are allowed to come in under a joint Commission, but the joint Effects are first to be applied to pay the Partnership Debts, and then the separate Debts, and as to the separate Effects, first the separate Creditors, and afterwards the Partnership Creditors, are to be paid out of the same (m).

Lord Chancellor *Hardwicke* said, that the Commissioners had no Power of admitting separate Creditors to prove Debts under a joint Commission without the Sanction of the Court (n); and (o) he laid it down for

(l) *Atk. Rep.* 225.

(m) *Atk. Rep.* 67. pl. 22. 2 *Vern.* 706. pl. 628. *Barnard. K. B.* 470.

(n) *Atk. Rep.* 68. pl. 23.

(o) *Atk. Rep.* 97. pl. 45. 98. pl. 46.

a Rule, that where there was a joint and separate Commission, a Creditor under the joint Commission might come under the separate, and assent or dissent to the Certificate of the Bankrupt under the separate Commission.

2. Mutual Debts and Credit.

Where (p) it shall appear that there *has* (q) *been* mutual Credit given, or mutual Debts between the Bankrupt, and any other Person, the Commissioners or Assignees shall state the Account, and one Debt may be set against another, and the Balance

(p) Stat. 5 Geo. 2. c. 30. S. 28.

(q) L. C. J. Lee, considering that it might be dangerous to enquire into the precise Time of indorsing negotiable Notes, directed the Jury to allow a promissory Note *indorsed* to a Debtor of a Bankrupt *after* the Bankruptcy to be set off, which with much Difficulty, and merely in Deference to his Opinion, they did, but upon a new Trial the Court would not allow such Note to be set off, for the Words of the Act are mutual Debts *before*; and besides, it would be of ill Consequence in Trade, if Debtors to the Bankrupt's Estate should be allowed to buy up Debts in order to set them off; but the Court gave no Opinion how it would have been, if the Nature of the Transaction, and the Time of the actual Indorsement had *not* appeared. 2 *Stra.* 1235. Lord Hardwicke said that A. a Debtor to a Bankrupt *before* his Bankruptcy, and a Creditor to him upon a Contingency that took Place *after* the Bankruptcy, should not be at Liberty to set off under this Clause. *Atk. Rep.* 119.

of

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of such Account shall be claimed or paid.

Lord Chancellor (r) *Cowper* said, that where there was mutual Credit between a Bankrupt and a Creditor, the Balance should only be paid, and that the Clause in the Statute was not to be construed of Dealings in Trade only, or in Case of mutual running Accounts, but also where one Credit was upon Mortgage, and the other upon Note; and he said, that in all Cases of mutual Credit, it was natural Justice and Equity, that * only the Balance should be paid.

Sir *Stephen (s) Evans* in the Year 1711 had 5000*l.* Stock in the *Hudson's Bay* Company, and was their Banker or Cashier, and upon that Account was indebted to the Company in 800*l.* and soon after became Bankrupt; the Assignees brought a Bill against the Company to have the 5000*l.* Stock transferred to them, with all Dividends due thereon: The Company by their Answer insisted upon the above Clause of the Statute 5 Geo. 2. and that Sir *Stephen Evans* having Credit in their Books for 5000*l.* Stock, and the Company on the other Side having Credit in Sir *Stephen Evans's* Book for 800*l.* they ought to de-

(r) *Wil. Rep.* 325, 326.

* So before the Statute; by *Hale*, and *North. Com. Dig.* 535.

(s) 7 *Vin. Abr.* 125. pl. 2.

duct and have an Allowance of the 800*l*. out of the 5000*l* Stock.

It was argued for the Defendant that this Case was within the Clause of the Statute of mutual Credit, &c. and that Sir *S. E.* was a Creditor of the Company for his 5000*l*. Stock, and the Company a Creditor of Sir *S. E.* for the 800*l*. due to them; that the Stock was called Credit in the Books of the Company, and that he had a Demand against the Company for the Interest and Produce of the Stock, and though there was Nothing due to Sir *S. E.* for Dividends at the Time of his Bankruptcy, yet the Stock itself was a Debt from the Company, and so within the Clause of the Act of setting one Debt against another, and only the Balance due to Sir *S. E.*'s Assignees; that it would be very unreasonable where there were mutual Dealings and Credit, that the Debtor of the Bankrupt should be bound to pay the whole due from him to the Bankrupt's Estate, and he, *e contra*, should only come in as a Creditor under the Commission for all due to him, and receive, perhaps, only two or three Shillings in the Pound for his whole Debt, &c.

Lord Chancellor (*t*) *King* thought that this Case was within the Clause of the

(*t*) 7 *Vin. Abr.* 127.

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Statute of setting off Debt against Debt; that there was mutual Credit given, and therefore thought the Company might retain the 800*l.* due to them, out of the Dividends due to the Bankrupt's Estate, subsequent to the Bankruptcy, and should not be obliged to come in as a Creditor under the Commission, and decreed (*u*) accordingly.

Lord (*w*) *Hardwicke* said, that under Stat. 5 Geo. 2. c. 30. S. 28. Persons might set off Debts, as that Act extended to all mutual Debts, though independant of, and not relative to the mutual Credit between the Bankrupt and other Persons in the Course of Trade, and though the Debts were of such a Nature as could not be brought into a general (*x*) Account.

(*u*) *Raymond* Ch. J. and Mr. Baron *Price*, who assisted his Lordship, gave no direct Opinion, but seemed to agree with the Chancellor. 7 *Win. Abr.* 127. But Sir *John Strange* says, that the Court was of this Opinion. *Stra.* 645. And Eq. Cas. *Abr.* 9. expressly says, "decreed per Lord Chancellor, assisted by *Raymond* C. J. and Mr. Justice *Price*," without observing, that either of the Judges dissented.

(*w*) *Atk. Rep.* 185.

(*x*) He said the Clause in the Act of 5 Geo. 2. relating to mutual Account, had been carried to be sure further, and rightfully, than a mere Matter of Account, but that he did not know that a Court of Equity had gone further than the Courts of Law in the Cases of a Set-off, which was further, indeed, than Cases of Account. *Atk. Rep.* 237. See fol. 112.

His (y) Lordship said, that the Clause in the Act of Parliament of the 5 Geo. 2. c. 30. relating to mutual Credit, had received a very liberal Construction, and there had been many Cases which that Clause had been extended to, where an Action of Account would not lie, nor could the Court of *Chancery* upon a Bill decree an Account; that it was very hard to say that mutual Credit should be confined to pecuniary Demands, and that if a Man had Goods in his Hand belonging to a Debtor of his, which could not be got from him without an Action at Law or Bill in Equity, that it should not be considered as mutual Credit; and Lord (z) *Cowper's* Opinion plainly favoured that Construction, for he looked upon the Jewels pawned, and Notes given, as an Account current between them; and that, though, if there had been no Bankruptcy, in an Action for the Goods in Question, the Debt could not have been set off, yet as the Clause of mutual Credit had been extended, Lord *Hardwicke* thought it might come within that Rule, especially as there was an Account between them.

A Creditor of the Bankrupt and a Debtor to him upon Bond payable at a future Day with lawful Interest petitioned Lord

(y) *Atk. Rep.* 229.

(z) *2 Vern.* 691. pl. 616.

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(a) *Hardwicke*, that he might set off his Demand against the Principal and Interest due on the Bond as far as it would go, and not be obliged to prove his Debt under the Commission, and take a Dividend upon it only.

Lord (b) *Chancellor* said, that before the making Stat. 5 Geo. 2. c. 30. S. 28. if a Person was a Creditor, he was obliged to prove his Debt under the Commission, and received perhaps a Dividend only of 2s. 6d. in the Pound from the Bankrupt's Estate, and at the same Time pay the whole to the Assignee of what he owed to the Bankrupt; that to remedy this great Inconvenience the Act was made; Suppose, for Instance, said Lord *Hardwicke*, there had been a Bond from the Bankrupt to *A.* payable at a future Day, and a Debt owing from *A.* on simple Contract to the Bankrupt for a less Sum, the Account between *A.* and the Bankrupt should first of all be stated, and one Debt set against the other, and *A.* should be entitled to a proportionable Dividend of such Bankrupt's Estate, *pro rata* with the other Creditors, "discounting the Bond payable at a future Time, after the Rate of 5 *per Cent*, for what he should so receive, to be computed from the actual

(a) *Atk. Rep.* 230. pl. 126.

(b) *Atk. Rep.* 231.

Payment thereof, to the Time such Debt should or would have become payable in and by such Bond." These are the Words at the Conclusion of the Clause in the Statute of the 7 Geo. c. 31. relating to Creditors whose Debts are payable at a future Day.

Consider it then (continued his Lordship) the other way, where *A.* is a Debtor to the Bankrupt by Bond payable at a future Day, and a Creditor upon his Estate by simple Contract for a less Sum, would it be just and equitable that he should be obliged to prove his Debt under the Commission, and receive perhaps 1s. only in the Pound, and yet when his Bond becomes due, which in some Instances might be in three Months only, pay the whole Debt, Principal and Interest, to the Assignee under the Commission? This might indeed in Strictness be said not to be a mutual Debt, but was it not a mutual Credit? The Bankrupt gave Credit to the Petitioner in Consideration of this Bond, though payable at a future Day: and the Petitioner gave the Bankrupt Credit for the Debt he owed the Petitioner upon simple Contract; and therefore he thought this Case was within the Equity of the 5th of George 2.

The Plaintiffs were Assignees under a Commission of Bankruptcy awarded against Sir *Justus Beck*, and brought this Bill against
the

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the Defendants, to compel them to assign and transfer to the Plaintiffs several Shares in their Stock, to which Sir *Justus Beck* was entitled, and which in the Year 1720 cost him between 10 and 12000*l.* The Defendants, by Answer insisted, that Sir *Justus Beck* was one of the Directors of their Company, and that in the Year 1720, after his Purchase of the before mentioned Stock, the Company lent him about 12000*l.* and insisted, that they ought not to be obliged to let the Plaintiffs transfer or dispose of the Interest which Sir *Justus* had in the Stock, without Payment of the 12000*l.* borrowed, and that by Virtue of the Act 5 Geo. one Account ought to be set off against the other; and for that Purpose they had come in as Creditors under the Commission of Bankruptcy, and had proved their Debts; there was no Pretence that the Money was lent on the Security of the Stock; but it was insisted, that on the Credit of the great Parcel of Stock, which Sir *Justus* had in their Company at that Time, that they lent him this Money, and therefore would now stop his Stock till Payment thereof, or as far as the Value of the Stock would extend, which now by the great Fall of Stocks would by no Means satisfy their Debt; but it was decreed at the Rolls, and that Decree on an Appeal affirmed by the Lord (c)

(c) Eq. Caf. Abr. 9.

Chancellor

Chancellor *King*, that the Defendants ought to permit the Plaintiffs, the Assignees to transfer and dispose of the Stock for the most they could make of it, and that they could not stop or retain the Stock for their Satisfaction, either before or by Virtue of the Statute 5 Geo. And though the Company had the whole Stock of it in them in their corporate Capacity, yet the Stock of each Proprietor was distinct, and vested only in himself, with which the Company had Nothing to do further than they were invested therewith by the Charter, or Act of Parliament with which they were incorporated and impowered, or ordered to transfer each one's Stock by Transfers to be made in the Books of the Company; which otherwise every Proprietor might by Deed, or otherwise, have transferred as he thought fit. And it was held, that this Case differed from the first Case, fol. 103. And it was said, that this was not like the Case, where (d) a Banker lent 200*l.* on a Pledge of Jewels, and afterwards lent the same Person a further Sum of Money on his bare Note; yet he was not admitted to redeem the Jewels without Payment of the Note likewise; for there it was between two private Persons. And it was held not to be within the

(d) Ch. Pr. 419. pl. 279. 2 Vern. 691. pl. 616.
See *Atk. Rep.* 229. 236.

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Statute of 5 Geo. which speaks only of mutual Dealings and Accounts, which is not this Case, as Sir *Justus* had a fix'd permanent Interest in the Stock; and the Money borrowed without regard thereto. And the Court held this was not like the Case of Partnership, where if any of the Partners borrowed any of the Partnership's Money, his own Share should be answerable for it, and he should not be permitted to come into a Court of Equity, and pray an Account of his Share of the Partnership, Stock, and Effects, without making Satisfaction for the Debt he owed to the Partnership; for this was a Transaction between them as private Persons, and on a mutual Credit and Trust; but the Loan of the 12000*l.* in the present Case to Sir *Justus*, was not in their corporate Capacity, wherein only he stood related to them, and held this Stock, but was a Loan by them as private Persons, for which they could not stop his Stock, which he held as a Member of the Company in their corporate Capacity.

Where (e) there are mutual Debts between the Plaintiff and Defendant, or if either Party sue or be sued as Executor or Administrator, where there are mutual Debts between the Testator or Intestate and either

(e) Stat. 2 Geo. 2. c. 22. S. 13. perpetuated by Stat. 8 Geo. 2. c. 24. S. 4.

Party,

Party, one Debt may be set against the other, and such Matter may be given in Evidence upon the general Issue, or pleaded in Bar, as the Case shall require; so as at the Time of pleading the general Issue Notice be given of the particular Sum or Debt intended to be insisted on, and upon what Account it became due.

Lord Chancellor (*f*) *King* was of Opinion, that *joint* Debts could not be set off against a *separate* Demand due to the Bankrupt, this Case not being within Stat. 2 Geo. 2. c. 22. S. 13. But if both Demands had been separate, he thought that was a mutual Credit within the Statute; and that though in such Case the Statute speaks only of setting off one Debt against another upon *Trials*, yet Commissioners of Bankrupts are within the Equity of the Statute, and might allow of mutual Debts being given in Discharge upon the Demand of Assignees.

3. Interest.

As to such Interest as any particular Creditor may be entitled to, by Virtue of his Lien or Security on the Bankrupt's Estate, we refer the Reader to our alphabetical Arrangement of Creditors.

(*f*) 2 *Kel.* 24. pl. 19.

For

For Debts on Specialty, the Creditors shall have Interest as well between the Act of (g) Bankruptcy as before, and (h) tho' the usual (i) Rule is, that all Interest on Debts carrying Interest shall cease from the Time of issuing the Commission; yet when a Bankrupt's Estate is sufficient to pay every Debt, with a large Surplus left, Creditors, whose Debts carried Interest, shall be allowed Interest for their respective Debts, from the Time the Computation of it was stopt by the Commissioners, and the Bankrupt or his Representatives will be chargeable therewith, but such as are Creditors by Bond, not beyond their (k) Penalties (l).

(g) 7 *Vin. Abr.* 110. [B. a.] pl. 1.

(h) *Atk. Rep.* 244. pl. 132. 2 *Black. Com.* 488.

(i) All Creditors come under the Terms of the Commission, which is to have Interest no farther than the Time of issuing the Commission, and if that was the Rule of Law, to be sure they must abide by it, but Lord *Hardwicke* said there was no such Rule, and that there was no Direction in Stat. 21 Jac. c. 19. S. 9. for that Purpose, and that the Practice had been used only as the best Method of settling the Proportion among the Creditors, that they might have a Rate like Satisfaction, and that it was founded upon the equitable Power given the Commissioners by the Statute. *Atk. Rep.* 79. See id. 244. pl. 132.

(k) Lord *Hardwicke* said, that Stat. 21 Jac. c. 19. S. 9. only meant to exclude Creditors from the Benefit of the Penalty as *against Creditors*, and not as *against the Bankrupt himself*. *Atk. Rep.* 78.

(l) *Atk. Rep.* 75. pl. 29.

Where

For

Where (m) there is mutual Credit between a Bankrupt and a Creditor, the Commissioners ought to stop Interest on both Sides at the Time of the Bankruptcy, or compute Interest on both till settling the Account.

Lord (n) *Hardwicke* said, there was a plain Distinction between Debts that carried Interest, and a special Deposit of Goods and Stock, for that in the former Case the Interest should be carried down to the Date of the Commission; but that in the latter it was otherwise, for the Interest stopped from the Time of the Deposit, and a Calculation should be made of the Value of the whole entire Thing deposited both Principal and Interest, be it Stock or Goods, according to the Market Price at the Time of the Deposit, and that Interest was not to run on as in the Case of a simple Debt.

4. Exhibits.

If a Creditor has any Security for his Debt, as a Bond, Note of Hand, Bill of Exchange, &c, he must produce them to the Commissioners who are to indorse or underwrite them thus:

“ At *Guildhall, London,* *Day*
of *June, 1767.* Exhibited to us under the

(m) *Atk. Rep.* 80.

(n) *Atk. Rep.* 259. pl. 139.

Commission

Commission of Bankrupt against *A. B.*" This the three acting Commissioners are to sign; and this Indorsement is called an Exhibit.

If a Person acts for another Creditor under a Commission of Bankrupt, he must produce his Authority, as Letters of Administration, of Attorney, (with an Affidavit of the Execution,) Probate of a Will, &c. in order to satisfy the Commissioners that the Party has a legal Authority to act for his Principal, these also are to be shewn to, and exhibited by the Commissioners.

If any Creditor has a Lien on the Bankrupt's Estate as a Mortgage, Pledge, Judgment, Bill of Sale, &c. he is not obliged to part with them till he is satisfied his Debt as far as such Liens will extend, and if after such Satisfaction any Part of his Debt remains unpaid, he may come under the Commission for the Residue, but for further Particulars as to this Matter we refer the Reader to "Creditor by Judgment," "Mortgagee," "Pawnee, &c." in our alphabetical Arrangement of Creditors.

If the Act of Bankruptcy be a fraudulent Deed, or Judgment, such Deed, &c. must be exhibited to the Commissioners, that they may judge whether it be so far fraudulent, as that the Execution of the one, or suffering the other, was an Act of Bankruptcy.

On

On a Bankrupt's last Examination, all his Books, Papers, Writings, Securities, and Liens on the Estates or Goods of other Persons, ought to be exhibited to the Commissioners, to shew he did not secrete any Part of his Estate or Effects, *at the Time of his Examination.* See more under "Depositions" in The Appendix.

5. Claims.

Where a Creditor cannot ascertain his Debt so as to swear to it, or is not able to produce his Security, or where a Person who acts in Right of another cannot shew his Authority, in these Cases the Commissioners usually allow such Persons to enter a Claim, but he will not be entitled to a Dividend of the Bankrupt's Estate till it is established by Proof on Oath; which if the Claimant cannot do by the Day whereon the Commissioners declare a Dividend, the Claim will be struck out of the Proceedings, unless he gives some very good Reason, to be allowed by the Commissioners, for the Neglect; yet such Claimant may even afterwards swear to his Debt, but he will then loose the first Dividend, unless the Creditors (the Assignees having sufficient in Hand) agree that such Creditor be paid the first Dividend; if they refuse, the Great Seal will order it

on

on Petition, but it will be on this special Condition, viz. that it does not break in upon the former Dividend, for it would be very unreasonable indeed to oblige those Creditors, who have been no ways in Fault, to refund to a Creditor who has been guilty of the most gross Neglect in his own Affairs.

6. Alphabetical Arrangement of Creditors.

- | | |
|-----------------------------------|-------------------------------|
| 1. <i>Annuitant.</i> | 19. <i>Executor.</i> |
| 2. <i>Apprentice.</i> | 20. <i>By Extent.</i> |
| 3. <i>Assignee of a Bankrupt.</i> | 21. <i>Factor.</i> |
| 4. ———— <i>of a Bond.</i> | 22. <i>Foreign Creditors.</i> |
| 5. ———— <i>of a Debt.</i> | 23. <i>Gaoler.</i> |
| 6. ———— <i>of a Ship.</i> | 24. <i>Guardian.</i> |
| 7. <i>Attorney.</i> | 25. <i>By Judgement.</i> |
| 8. <i>Bail.</i> | 26. <i>Landlord.</i> |
| 9. <i>By Bill of Exchange.</i> | 27. <i>Legatee.</i> |
| 10. <i>On Bond.</i> | 28. <i>Miller.</i> |
| 11. <i>Book-keeper.</i> | 29. <i>Mortgagee.</i> |
| 12. <i>Builder.</i> | 30. <i>By Note of Hand.</i> |
| 13. <i>Collector of Taxes.</i> | 31. <i>Packer.</i> |
| 14. <i>Companies.</i> | 32. <i>Parishioner.</i> |
| 15. <i>Contingent Creditors.</i> | 33. <i>Partners.</i> |
| 16. <i>Corporations.</i> | 34. <i>Pawnee.</i> |
| 17. <i>Country Creditors.</i> | 35. <i>Purchaser of Land.</i> |
| 18. <i>By Execution.</i> | 36. <i>Relations.</i> |
| | 37. <i>Seller of Land.</i> |
| | 38. <i>Servants.</i> |
| | 39. <i>Surety.</i> |
| | 40. <i>Trustee.</i> |

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40. *Trustee.*

42. *By Verdict.*

41. *Vendee.*

43. *Wife.*

1. *Annuitant.*

Lord *Hardwicke* preferred it to the Commissioners to settle the Value of an Annuitant's Life, and that she be admitted a Creditor for such Valuation, and the Arrears of the Annuity, and not for the whole (o) Purchase Money.

2. *Apprentice.*

Lord (p) Chancellor *King*, *Talbot*, and *Hardwicke*, ordered an Apprentice, whose Master became Bankrupt, to be admitted as a Creditor (q) under the Commission on Account of the Apprentice Fee received by

(o) The Creditor gave 300*l.* for an Annuity of 30*l.* a Year for her Life, payable out of the Bankrupt's Estate; as the Annuitant had enjoyed the Annuity eighteen Years, his Lordship thought it unreasonable that she should have the whole Purchase Money. *Atk. Rep.* 251. pl. 134.

(p) *Atk. Rep.* 149. pl. 89. See id. 261.

(q) But Lord *Hardwicke* on another Occasion held; that the most equitable Method was to allow him a gross Sum out of the Bankrupt's Effects, and Commissioners of late Years have recommended it to Creditors to allow it, and in his Opinion very rightly, for it would be hard to make him come in as a Creditor under the Commission. *Atk. Rep.* 261.

the

Ch. 3. Assignee of a Bankrupt. 119

the Master, only for the remaining Sum thereof, after deducting for the Time he lived with the Bankrupt.

3. *Assignee of a Bankrupt.*

W. draws Bills of Exchange on *H.* who had no Effects of *W.* in his Hands, the Bills are transmitted to *R.* and Company, and indorsed over by them to several Persons; Lord (r) *Hardwicke* ordered the Assignees of *R.* and Co. to be admitted as Creditors - under *W's* Commission, for so much as they had paid to the Indorsees of *W's* Bills of Exchange under *R.* and Co's Commission.

The Execution of the Assignment by the Commissioners under the Commission on Behalf of which the Assignee applies to be admitted a Creditor, should be proved, either by Affidavit before a Master in Chancery, exhibited to the Commissioners, or *vivâ Voce* before them, but the Bankrupt need not *always* join with his Assignee in the Deposition, because though the Bankrupt hath actually received the Debt, the Payment may happen to be void as to his Assignee.

(r) *Atk. Rep.* 122. pl. 67.

4. Assignee

4. *Assignee of a Bond.*

In (s) Equity a Bond is assignable for valuable (t) Consideration paid, and the Assignee alone becomes entitled to the Money, so that if the Obligee after (u) Notice of the Assignment pays the Money to the Obligee, he will be compelled to pay it over again; and though a Bond being a *Chose in Action* cannot (w) be assigned over by Law so far as to enable the Assignee to sue in his own (x) Name, yet he has by the Assignment such a Title to the Paper and Wax, that he may keep or cancel it.

Bonds are assignable in *Holland*, and therefore an Assignment of Bonds there, according to their Custom, are allowable here; by Lord Keeper (y) *Finch*.

(s) 2 *Vern.* 595. pl. 534.

(t) 3 *Chanc. Rep.* 50. [*90.]

(u) 2 *Vern.* 540. But Payment to the Obligee without Notice of the Assignment is good. *Chanc. Cas.* 232.

(w) Unless for a Debt due by an Assignor to the Assignee. 3 *Lev.* 234. *Noy. Rep.* 52.

(x) And by the Modern Practice he may sue for it in the Name of the Obligee, as his Attorney; but the Compiler of the "New Abridgement of the Law" doubts whether this can be done without an express Authority. *Bac. Abr.* 157.

(y) *Chanc. Cas.* 232.

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The Obligee in the original Bond must join with the Assignee in the Deposition that he hath not received the Debt, or any Part thereof, or any Security or Satisfaction for the same, for if the Obligor (the Bankrupt) has discharged the Debt though he paid it to the Obligee with Notice of the Assignment, yet the Bankrupt's Estate in such Case is totally discharged; and the Assignee must take his Remedy over in *Chancery* against the Obligor.

5. Assignee of a Debt.

Though (z) Debts are not (a) assignable in Law, yet they are on good Consideration assignable in Equity. Lord Keeper (b) *Bridgman* said, that he would not protect the Assignment of any *Chose in Action*, unless it was in Satisfaction of some Debt due to the Assignee, but not where the Debt or *Chose in Action* was assigned to one to whom

(z) 2 Chanc. Caf. 7. 36.

(a) A *Chose in Action* may be assigned over for lawful Cause, as a just Debt, but not for Maintenance. *Bro. Abr.* 137. pl. 3. 15 H. 7. 2. pl. 5. Other Authorities say, that if one assigns over his Debt to another, and the Debtor agrees to it, yet that the Assignee shall not have Action, nor the Debtor be discharged against the Assignor. *Bro. Abr.* 225. pl. 178. 11 H. 6. 7. pl. 12. 16. pl. 9. by the Court, which note; 3 *Vin. Abr.* 151.

(b) 2 *Freem.* 145. pl. 185.

the Assignee owed Nothing precedent, so that the Assignment was voluntary, or for Money then given. By the Law of Merchants, a Merchant may (c) assign Debts. The original Creditor must join in the Deposition with the Assignee.

6. *Assignee of a Ship.* See "*Mortgagee.*"

7. *Attorney.*

An Attorney had been employed by one who became Bankrupt; Assignees petition to have up Papers, and that the Attorney might come in for his Demands *pari Passu* with other Creditors.

Lord Chancellor *Talbot*: The Attorney hath a Lien upon the Papers, in the same Manner against Assignees as against the Bankrupt; and though it doth not arise by any express Contract or Agreement, yet it is as effectual, being an implied Contract by Law; but as to Papers received after the Bankruptcy, they cannot be retained; and therefore if the Assignees desire it, let the Bill be taxed, and upon Payment Papers delivered up; and although the Attorney had come in and proved his Debt, yet a Creditor who hath a Security may properly come in and prove his Debt, be-

(c) 2 Chanc. Caf. 37.

cause possibly his Security may prove deficient (*d*).

8. Bail.

If *A.* is Bail for *B.* either to bring in his Body, or to pay the Condemnation Money, and *B.* becomes a Bankrupt, whereupon *A.* pays the Money, he may come in as a Creditor (*e*).

If the Bail be *liable*, that is, if he has justified himself as such, *before* his Principal becomes Bankrupt, though he be not *fixed* till *after*, yet it seems he is well entitled to make his Claim forthwith, and to *prove*, as soon as he has paid the Condemnation Money, otherwise there could be no Reason for the Distinction between "*Debitum*" in *presenti*, *solvendum* in (*f*) *futuro*. Yet *quere*, for Lord (*g*) *Hardwicke* declared Bail were no Creditors till damnified. See "*Sureties*."

9. By Bill of Exchange.

The Creditor of a Bankrupt had Bills of Exchange on Merchants in *Holland*, who made themselves liable by accepting them,

(*d*) 7 *Vin.* Abr. 74. pl. 8.

(*e*) *Com. Dig.* 527.

(*f*) See 2 *Stra.* 949. 2 *Barnard.* K. B. 251. 255.

(*g*) *Atk. Rep.* 238. pl. 130.

and afterwards failed and compounded with their Creditors; so that this Creditor had two Persons at Stake for his Debt, one of them Bankrupt, and the other had made a Composition; this Creditor had received Nothing under the Composition at the Time he proved his Debt under the Commission of Bankrupt, and therefore admitted a Creditor for the whole; but before a Dividend he received two Shillings and six Pence in the Pound under the Composition of the Acceptors of the Bills; the Commissioners directed that he should be paid his Dividend, after deducting what he had received on the Bills of Exchange; the Assignees said, that he should be paid a Dividend only on the Sum left after deducting the 2s. 6d; but (b) this would be taking away from a Man the double Security he had, and which he might make Use of in Law and Equity, till he (i) was satisfied his whole Debt;

(b) So said by Lord Hardwicke. *Atk. Rep.* 110.

(i) Suppose (said Lord Hardwicke) there are several Obligors, the Obligee may have several Actions against them all, several Judgments too, and several Executions; but he shall not levy more than one Satisfaction for his Debt; if he does Courts of Law will step in. [*Str.* 515.] The same in Bills of Exchange; Actions, &c. lie against Drawer and all the Indorsors, but only one Satisfaction for the Debt; so under Commissions of Bankrupt, the Creditor is entitled to come under the Commission against all the Obligors, Draw-

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as the Composition was not paid till after the Debt proved, the Creditor should receive a Dividend on his whole Debt *pro Ratâ* with the other Creditors, and should account thereafter for what he had received, or should receive on the Bills of Exchange; and that this would not be any Prejudice to the Estate, for if he received more from those Bills of Exchange than would answer 20s. in the Pound, he should account to the Assignees for the Surplus.

Lord *Hardwicke* said, that this Case differed from that (*k*) in which the Court would not admit a Person who had received a Dividend of 6s. against the Drawer, to prove more than the remaining 14s. as a Creditor under the Commission against the Indorsee, because the Creditor there had received the Benefit before he had attempted to prove his Debt against the Indorsee under the Commission (*l*).

A. drew a Bill payable to *B.* on *C.* in *Holland*, for 100*l.* *C.* accepts it, afterwards *A.* and *C.* became Bankrupts, and *B.* receives 40*l.* out of *C.*'s, Effects, after which he wanted to come in as a Creditor for

ers, &c. and this is not a Preference given to such Creditor, but a Benefit he is entitled to at Law, upon all his Securities, till he is compleatly satisfied. *Atk.* Rep. 110.

(*k*) See under "Creditor by Note of Hand."

(*l*) *Atk.* Rep. 111.

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the whole 100*l.* out of *A's* Effects. Lord Chancellor *Macclesfield* permitted *B.* to come in as a Creditor for 60*l.* and directed the Master to see whether the other 40*l.* was paid out of *A's* Effects in *C's* Hands, or out of *C's* own Effects; if the latter, then *C.* was a Creditor for this 40*l.* also, but if out of *A's* Effects, then 40*l.* of the 100*l.* was paid (*m*) off.

The Costs and Charges of protesting Bills of Exchange accrued before the Commission issued allowed by Lord *Hardwicke* (*n*) to be proved under the Commission, but no Part of the Costs arisen afterwards.

If a Man draws a Bill of Exchange before he becomes Bankrupt, though it is not protested till after, yet it seems that the Debt incurred thereby may be claimed immediately, and proved when the Bill is returned protested; otherwise the Distinction of "*Debitum in presenti, solvendum in futuro*" would be groundless (*o*) and idle.

10. By Bond.

A. lent Money to *B.* and *C.* on their Bonds, *B.* became Bankrupt, the Com-

(*m*) 2 *Wil.* Rep. 89. pl. 91.

(*n*) *Atk* Rep. 140. pl. 81.

(*o*) See 2 *Stra.* 949. 2 *Barnard.* K. B. 251.
2 *Kel.* 239. pl. 191 "*Contingent Creditors.*" fol. 131.
missioners

missioners assigned the Estate in Trust for the Creditors.

A sued the Bond against *C.* and got Judgment, and took him in Execution by a *Ca. sa.* and thereupon *C.* paid *A.* 24*l.* but being old and poor, *A.* consented to discharge him out of Custody. Lord Chancellor (*p*) *Harcourt* decreed *A.* to come in as a Creditor for a Moiety of what remained due on the Bond, for the Execution being subsequent to the Assignment of the Bankrupt's Estate, should not (at least in Equity) discharge *A's* Demand out of the Bankrupt's Estate; but because each in Equity was liable but to half the Debt, and *C.* was not the original Debtor for the whole, *A.* should have Relief only for a Moiety of his remaining Debt against the Assignees; but had the Bankrupt been the original Debtor, and had borrowed all the Money, then *A.* should come in before the Assignees as a Creditor for all his Debt.

Lord Chancellor *Hardwicke* said, that though a Creditor on Bond and an open Account besides, was finally to be admitted a Creditor only for the Balance, and yet notwithstanding it was every Day's Experience that he was admitted to prove the Bond Debt, but still the Commissioners might take the Account afterwards, and

(*p*) *Wil. Rep.* 237. pl.

the Creditor should be entitled on a Dividend to no more than what appeared to be really due to him on the Balance (q).

11. *Book-keeper.*

The Practice under Commissions of Bankrupt of admitting or rejecting the Proof of Debts by Book-keepers, and Wives, on Behalf of their Masters, and Husbands, seems extremely unsettled.

The Commissioners who admit Book-keepers, allege, that many Creditors would not be able to prove their Debts, if the Proof by the Book-keepers on their Behalf was rejected, several Merchants and Tradesmen leaving the Care of their Books and the Conduct of their Affairs so much to them; and that the Act of the Servant is the Act of the Master at Law, who would not there be received to prove his own Demand.

Those Commissioners who reject the Evidence of Book-keepers say, that the Merchant or Tradesman who is so negligent of his own Affairs as not to be able to swear either to the Order or Delivery of his Goods, ought to suffer for such Neglect; and in Answer to the Objection that at Law the Act of the Servant is the Act of the

(q) *Atk. Rep.* 70.

Master,

Master, and that the Master will not there be received to establish his own Demand, they say, that the Rule of Evidence at Law as to this Matter is *inverted* under *Commissions of Bankrupt*, for here the Creditor's own (r) Oath is sufficient Proof of his Debt.

We beg leave to offer a Remedy for these Inconveniencies, and in order to make the Practice of Commissioners uniform, regular, and certain, let the Merchant or Tradesman allow his Book-keeper some small *Share* in the Business, and then in Quality of a *Partner* he will have a legal Right to be admitted. As to Wives; why may they not under the Bankrupt Laws which are to be construed most beneficially for (s) Creditors, and under which the Commissioners (t) have an equitable as well as a legal Jurisdiction, be deemed *Partners* in Favor of Trade and of their Husbands, as they are sometimes even at Law deemed (u) Servants to their Husbands; or at least they may be admitted by those Commissioners who do not reject the Proof of Book-keepers.

(r) *Atk. Rep.* 77.

(s) 2 *Sbow. Rep.* 519, 520. 2 *Eq. Cas. Abr.* 97. *Cas. Temp. Talb.* 185. Stat. 21 Jac. c. 19. S. 1. Mar. 36.

(t) *Atk. Rep.* 77.

(u) *Cro. Car.* 69. 2 *Stra.* 861. *Black. Com.* 430.

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12. *Builder.*

A. by Articles was to build certain Houses, *B.* furnished him with Materials, and took an Assignment of the Articles for his Security, but before the Assignment *A.* was Bankrupt.

Lord Chancellor *Cowper*: *B.* has a special Equity, in as much as by what he advanced, *A.* was enabled to perform his Agreement to the common Benefit of the Creditors, and therefore *B.* shall have all his Money he advanced after he had a specific Interest in the Articles; but as to what he gave Credit for before, he trusted as another Creditor.

And Lord Chancellor put the Case of *A.* in building a Ship, he becomes Bankrupt, and after *B.* furnishes Materials to finish it; *B.* shall have all his Money, and not come in Average with the other Creditors (*w*).

13. *Collector of Taxes.*

The Collector or Gatherer of Taxes must produce his Authority, viz. his Appointment or Deputation that the Commissioners may judge of the Legality of the Debt, otherwise the Bankrupt's Estate may be

(*w*) 7 *Vin. Abr.* 73. pl. 4.

doubly

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doubly charged for one and the same Debt.

See "*Parishioner*."

14. Companies.

The Clerk is usually appointed Receiver of his Company, and is therefore the proper Person to prove a Debt due from a Bankrupt to his Company, his Appointment under the common Seal of the Company, must be exhibited to the Commissioners.

15. Contingent Creditors.

Every Person who shall give Creditors Securities, payable at a future Day to Persons who are or shall become Bankrupts, upon good Consideration, *bonâ Fide*, for Money or other Thing, not due before the Time of such Person's becoming Bankrupts, shall be admitted to prove their Securities (x) or Agreements, as if they were payable presently, and shall have a Dividend in Proportion to the other Creditors, discounting 5*l.* per Cent. per Ann. from the actual Payment to the Time such Money would have been become due (y).

(x) From which the Bankrupt shall be discharged, as if such Money had been due before the Time of his becoming Bankrupt. Stat. 7 Geo. c. 31. S. 1.

(y) Stat. 7 Geo. c. 31. S. 1. The Occasion of making this Law was, that Merchants and other Tra-

A Trader contracted with the *East India* Company at one of their Sales for the Pur-

ders in Goods had been very often obliged, and more especially of late Years, to sell and dispose of their Goods and Merchandizes to such Persons as had Occasion for the same, upon Trust or Credit, and to take Bills, Bonds, Promisory Notes, or other Persons Securities for their Monies, payable at the End of three, four, or six Months, or other future Days of Payment, and the Buyers of such Goods becoming Bankrupts, and Commissions of Bankruptcy being taken out against them before the Money upon such Bills, Bonds, &c. became payable, it had been a Question whether such Persons giving such Credit on "*such Securities*," should be let in to prove their Debts, or be admitted to have any Dividend, or other Benefit by the Commission, before such Time as such Securities became payable which had been a great Discouragement to Trade, and a great Prejudice to Credit within this Realm. In a Question about a Bankruptcy, Chief Justice *Lee* held, that though the Preamble to this Statute spoke only of Bonds given for Goods in Trade, payable at a future Day, yet that the enacting Words extended to all Sorts of Bonds for the Payment of Money; and that the Words "*such Security*" did not mean Security for such a Sort of Debt, but Security by Bonds, Bills, Notes, &c. 2 *Stra.* 1211. 2 *Barnard.* K. B. 255. Lord Chancellor *King* said, that formerly in Case a Trader contracted a Debt payable at a future Day, and afterwards (but before the Day of Payment) became a Bankrupt, this is not being a Debt until after the Bankruptcy, at which Time the Bankrupt could not do any Act to alien or lessen his Estate to the Prejudice of his Creditors, such Contract was held void, and the Creditor not allowed to come in for a Satisfaction under the Commission; and in some Cases it was thought hard, that if one, on the buying of Goods, or for other valuable Consideration, should

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chase of a Parcel of *East India* Goods, to be paid for at a future Day, and before the Day of Payment he became Bankrupt. Lord Chancellor *King* held this Case not within the Statute, because (z) the Goods were not delivered, nor the Contract signed by the Party (a).

And at this Day, if a Bond or Note be given by a Trader upon a Contingency, and before it happens the Trader becomes a Bankrupt, and then the Contingency happens, this is not within the Act, neither shall the Debt arising (b) after the Bankruptcy be satisfied under the Commission (c); for it was uncertain whether such

give a Note under his Hand payable at a future Day, and actually had the Goods delivered to him, or the Money lent him, and before the Day of Payment the Debtor should become Bankrupt, that in this Case the Creditor could not come in under the Commission with the Rest of the Creditors; wherefore, for the remedying of this, the Statute was made. 2 *Wil. Rep.* 396. pl. 124. 2 *Lord Raym.* 1549. 7 *Vin. Abr.* 72. pl. 7. *Atk. Rep.* 116.

(z) There being no express Words in Stat. 7 *Geo. c.* 31. as to either the Delivery of the Goods, or as to the Contract's being to be signed by the Party; *quere* the Authority of this Opinion of Lord *King*.

(a) 2 *Wil. Rep.* 396. pl. 124.

(b) But if the Contingency happens before the Bankrupt's Estate be fully distributed, such Creditor shall come in *pro Rata*. 2 *Wil. Rep.* 499. *Moseley.* 79. pl. 51.

(c) By Lord Chancellor *King.* 2 *Wil. Rep.* 397. 497. pl. 159. S. P. by L. C. J. *Raymond.* 2 *Stra.* 869.

Bond

Bond or Note would ever become payable or not, by Reason of it's depending on a Contingency which had not happened at the Time of the Act of Bankruptcy committed, and so it was impossible to make an Abatement of 5*l. per Cent.* as the Act directed (*d*), which extended only to Creditors at a future Day *certain* (*e*). And Lord Chancellor *King* was of Opinion, that no Part of the Bankrupt's Estate should wait or be deferred from being distributed, the Act ordering that the Bankrupt's Estate should be distributed within four Months; especially that the Distribution should not wait, as in the present Case, for a Debt which was neither *Debitum in præsenti* and

2 Lord *Raym.* 1549. *Barnard.* K. B. 59. S. P. by Lord Chancellor *Macclesfield*; 7 *Vin. Abr.* 71. pl. 4. S. P. By Lord Chancellor *Talbot.* 7 *Vin. Abr.* 72. pl. 7. *Atk. Rep.* 114. Lord *Hardwicke* said, as to the Case that had been mentioned, in 2 *Wil. Rep.* 497. it was barely an Opinion of Lord *King*, and not the Case in Judgment; but he did *obiter* declare his Opinion only; that Lord *Talbot* afterwards doubted of Lord *King's* Opinion, and in a Case since, Lord *Hardwicke* had differed from him entirely, and had no Occasion to alter his Opinion. *Atk. Rep.* 118.

(*d*) 2 Lord *Raym.* 1546. *Moseley.* 79. pl. 51. 2 *Str.* 868. admitted in K. B. and afterwards affirmed in Error. *Com. Dig.* 527. Lord *Hardwicke* said, there had not been one Case since 2 Lord *Raym.* 1546. in the Court of *King's Bench*, but what had been determined expressly against a contingent Interest. *Atk. Rep.* 114.

(*e*) *Barnard.* K. B. 95. *Atk. Rep.* 130.

never

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never might be *Debitum in futuro*, in Regard the Obligor or Drawer of the Note, after his Certificate allowed, might go to his Trade again, and become a solvent Person, able to pay off the Bond or Note, and therefore the Court resolved, that the contingent Creditor should not come in for a Distribution, neither should the Money be reserved in Favor of such Contingency (*f*).

Lord (*g*) *Hardwicke* said, that there was no such Thing as drawing a Line between the Contingency not happening before the Bankruptcy, and yet happening before the Time of Distribution; that this would not only be an Hardship on the Bankrupt, but on the Rest of the Creditors, whose Debts were actually due, but would have given the contingent Creditor, a superior Privilege, by leaving it open to him to recover the Remainder of the Debt against the Bankrupt; and he (*h*) observed that contingent Debts were sometimes Cases of Value, more often Cases of Hardship and Compassion, and that it were to be wished they were remedied and settled for the future by (*i*) Act of Parliament.

E. W. previous to his Marriage with *C.* gave his Bond to her Father in the

(*f*) 2 *Wil. Rep.* 498. *Moseley*. 79. pl. 51.

(*g*) *Atk. Rep.* 119.

(*h*) *Atk. Rep.* 117.

(*i*) *Atk. Rep.* 117. 120.

Penalty of 600*l.* in (*k*) Trust that if the Marriage should take Effect, and C. should survive E. W. and if he should before his Death by Will or otherwise give or leave C. 300*l.* in Goods or other personal or real Estate, so as the same should be paid by his Executors or Assigns immediately after his Death to C. without any Claim by any Person or Persons whatsoever, then the Bond was to be void.

The Marriage was had, and about nine Years afterwards a Commission of Bankrupt issued against E. W. whereupon he was declared Bankrupt, and a few Days after that he died insolvent, before any Distribution of his Estate, and C. duly proved the Bond before the Commissioners, but the Assignees refused to make any Dividend to the Wife; she therefore petitioned Lord *Hardwicke*, as her Husband made no other Provision for her in his Life Time, that she might be let in to receive her Dividend, out of the Bankrupt's Estate and Effects in equal Degree with the other Creditors.

(*k*) Lord *Hardwicke* said, that the Distinction taken in the Court of *Chancery* had been between a Trust for the Wife, and a Bond absolutely given to the Wife herself before Marriage upon a Contingency of her surviving the Husband; that this was materially different from a Trust, because there a Person who came for Equity must do Equity. *Atk. Rep.* 114. 2 *Vern.* 662.

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Lord (l) *Hardwicke* said, that it would be the hardest Case in the World, if *C.* should not be admitted a Creditor before the Estate was divided away, that there were great Variety of Determinations in the Books, and therefore adjourned it, but the Rest of the Creditors coming to an Agreement, to let in the Wife of the Bankrupt as a Creditor for 150*l.* half of the Bond Debt only, she acquiesced under it, and therefore Lord *Hardwicke* gave no absolute Opinion, one Way or the other, but ordered it accordingly with the Consent of the Assignees.

Lord (m) *Hardwicke* said, that there had been a great many Cases in the Court of *Chancery*, upon the Point of Contingency; some where an Husband before Marriage had contracted with (n) Trustees for the Wife

(l) *Atk. Rep.* 113. 114.

(m) *Atk. Rep.* 117.

(n) If Husband becomes Bankrupt after Breach of Payment to Trustees, they have always been admitted Creditors upon equitable Terms, and the Court of *Chancery* had taken Care that the Interest of the Money should be paid to the Creditors under the Commission, during the Life of the Husband, and the Principal secured to the Wife, in Case she survived her Husband. If Judgement had been given at Law by the Husband for this Sum, it was a Debt notwithstanding the Defeazance, and the Trustees would have been admitted as Creditors, though the Terms of the Bond itself were otherwise, by Lord *Hardwicke. Atk. Rep.* 117.

to

to pay a Sum of Money in his Life Time, for her Benefit, *if she survived*, and if she died, for her Children, and if no Children, for the Benefit of the Husband. That there had been other Cases where the Time of Payment did not arise, till the Contingency had taken Effect, after the Death of the Husband; and that there had been other Cases, where (o) the Father of the

(o) Upon what Terms (said Lord Hardwicke) should the Party be relieved against the Penalty? Why upon paying what was in Conscience due out of the Estate. Here was clearly a Breach of the Condition of this Bond before the Bankruptcy, for the half Year's Interest was become due at *Christmas*, but not paid till the 10th of *January*, and therefore not being paid at the Day, the Penalty was forfeited at Law. It has been said, that it turns upon the Act for the Amendment of the Law, Stat. 4 An. c. 16. S. 12. "That when an Action of Debt is brought upon any Bond, which hath a Condition or Defeazance to make void the same upon Payment of a less Sum, *at a Day or Place certain*, if the Obligor, his Heirs, Executors, or Administrators, have, before the Action brought, paid the Principal and Interest due, though such Payment was not made strictly according to the Condition or Defeazance, yet it may be pleaded in Bar, and shall be as effectual as if the Money had been paid at the Day and Place according to the Condition, and had been so pleaded." Before this Act of Parliament, the Bond was forfeited if not paid at the Day. *At a Day or Place certain*, are material Words: that this was a new Defence, and a new Plea given by the Act of Parliament; and therefore the common Way of pleading was, that all Interest was paid before Action brought. But that this was not a Bond with a Defeazance for the Payment of a less Sum at a Day certain, for that here the Principal
Wife

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Wife had entered into a Covenant to pay a Sum of Money after the Death of *himself and Wife*, and Interest in the mean Time; and other Cases, where an (*p*) Husband by Articles previous to Marriage covenanted to leave his Wife 600*l.* in Case she

principal was to be paid at an uncertain Time; for it was to be paid within a Twelvemonth after the Death of the Survivor of Father and Mother. That it was not therefore a Bond within the Description of the Statute, nor did the Act of Parliament intend to comprehend Bonds of this Nature. For suppose a Bond payable at Installments, the Obligee gets Judgment on the whole Penalty, upon a Breach of Payment at the first Installment; why, even a Court of Law would in such Case act equitably, for upon the Obligor's applying to the Court there, and offering to pay the Money due at the Installment, and agreeing to let the Judgment stand as a Security for the Rest, they would relieve the Party, on Payment of the Money then due and Costs. That if this Case was not within the Act of Parliament, then it came within the Construction of the first two Cases, *Atk. Rep.* 117. 118.

(*p*) Lord Hardwicke was of Opinion (though he was sorry he must go on Niceties) that the Wife, as the Law now stood, could not be admitted a Creditor under a Commission of Bankrupt against the Husband. *Atk. Rep.* 115. Because in this Case there was not a Remedy at Law before such Time as the Act of Bankruptcy was committed; or Commission taken out. *Atk. Rep.* 118. And he further observed, that unless the Debt was *Debitum in presenti solvendum in futuro*, it could not be proved, that in those Cases where he had let in such Creditors, a Judgment was given at the Time, which was an immediate Debt at Law, and suspended only in Equity upon the Defeazance. *Atk. Rep.* 121.

survived

survived him, and he afterwards became Bankrupt and died before any Dividend made.

The (q) Obligee in any Bottomree or *Respondentia* Bond, and the assured in any Policy of Insurance, made and entered into upon a valuable Consideration, *bonâ Fide*, shall be admitted to claim, and after the Loss or Contingency happened, to prove his Debt and Demand, in respect of such Bonds or Policy of Insurance, in like manner as if the Loss or Contingency had happened before the Time of issuing the Commission against the Obligor or Insurer; and shall be entitled, and shall have and receive a proportionable Part, Share and Dividend of such Bankrupt's Estate in Proportion to the other Creditors of such Bankrupt, in like Manner as if such Loss or Contingency had happened before such Commission issued.

The Occasion of making this Clause of the Statute was that (r) Merchants and other Traders frequently lent Money on Bottomree or at *Respondentia*, and in the Course of their Trade frequently caused their Ships or Vessels, and the Goods and Merchandizes loaded thereon, to be insur-

(q) And the Bankrupt shall be discharged from the Debt on such Bond and Policy of Insurance. Stat. 19 Geo. 2. c. 32. S. 2. *Atk. Rep.* 121.

(r) Preamble to Stat. 19 Geo. 2. c. 32. S. 2.

Ch. 3. Contingent Creditors. 141

ed; and that where Commissions of Bankruptcy had issued against the Obligor in such Bottomree or *Respondentia* Bond, or the Underwriter or Assurer in such Assurance, before the Loss of the Ship or Goods, in such Bond or Policy of Insurance mentioned, had happened, it had been made a Question, whether the Obligee or Obligees in such Bond, or the Assured in such Policy of Insurance, should be let in to prove their Debts, or be admitted to have any Dividend under such Commission, which was a Disparagement to Trade, therefore the above Act was made.

Previous to Stat. 19 Geo. 2. the Obligor of a Bottomree Bond, becoming Bankrupt before the Return of the Ship, and the Ship not returning before the Distribution made, could have no Benefit of the Distribution under the Commission (s).

16. Corporations.

The Treasurer is the proper Person to demand a Debt due to a Corporation from a Bankrupt, and such Treasurer must shew the Commissioners his Deputation or Appointment under the Corporation Seal.

(s) *Wil. Rep.* 499. *Moseley.* 79. pl. 51.

17. Country

17. *Country Creditors.*

The Commissioners shall admit the Proof of any Creditor's Debt, who shall live remote from the Place of their Meeting, by Affidavit, or being of the People called *Quakers*, by solemn Affirmation, and also permit any Person duly authorized by Letter of Attorney from such Creditor (Oath or Affirmation being made of the due Execution thereof, either by an Affidavit sworn or Affirmation made before a Master in *Chancery*, ordinary, or extraordinary, or before the Commissioners *vivâ Voce*, to vote (*u*) in the Choice of Assignees in the Place of such Creditor (*w*).

(*u*) Though the Act mentions the voting in the Choice of Assignees *only*, yet it seems that the Letter of Attorney may be for several other Purposes; as for Instance, to sign a Bankrupt's Certificate; to receive Dividends; to consent to Composition, Arbitration, instituting Suits in Equity (for the Assignees may pursue any legal Method of recovering the Bankrupt's Estate or Effects, by their own Authority, 2 *Black. Com.* 486.) at a Meeting of the Creditors, to be held in Pursuance of Notice in the *Gazette* for that Purpose; and it may authorize the Party to do any other necessary and legal Act, but they must be all expressly mentioned in the Instrument; it is even said, that it may authorize the Party to accept the Trust of the Assigneeship, but it seems that it cannot; for a personal Trust which one Man reposes in another, cannot be assigned over, however able such Assignee may be to execute it. *Bac. Abr.* 158. See 2 *Roll. Rep.* 6. S. P. by *Bridgman* Ch. Just. Sid. 7. pl. 2. As the Letter of Attorney to sign the Bankrupt's Certificate must be filed in the

18. By

18. *By Execution.*

A Man who has an Execution, or an Extent (x) served or executed upon the Lands or Goods of a Bankrupt, before he becomes Bankrupt, needs no Relief under the Commission (y).

Secretary of Bankrupt's Office, before the Certificate can be allowed by the Great Seal, it seems adviseable to have one Letter of Attorney for that Purpose only, and another for the other Purposes mentioned above; because otherwise whenever it is necessary to produce it on any other Occasion as to receive a Dividend, &c. the Party must be at the Trouble and Expence of getting the Secretary of Bankrupt's Clerk to attend with it.

(w) Stat. 5 Geo. 2. c. 30. S. 26.

(x) The King is not within the Statutes of Bankrupt. *Atk. Rep.* 262. pl. 142. *Bunb. Rep.* 202. pl. 279. So that if after the Act of Bankruptcy committed, and before Assignment of the Bankrupt's Effects, an Extent issues for the Debt of the Crown, the Goods are bound thereby. 7 *Vin. Abr.* 104. pl. 1. And therefore where an Extent is expected, it is usual for the Commissioners to execute a provisional, temporary, or immediate Assignment as soon as ever the Party is declared Bankrupt, for if the Extent bears even Date with the Commission of Bankrupt and Assignment, the Extent will have the Precedence. *Bunb. Rep.* 33. pl. 50.

(y) Stat. 21 Jac. c. 19. S. 9. 2 *Black. Com.* 487. Plaintiff who hath Defendant's Body in Execution, shall not come in to be relieved, *Stone* 130. But one who hath the Bankrupt's Body upon a Statute Merchant may. *Stone* 131. pl. 50.

Where

Where a Bankrupt is in Execution before the Commission, and the Creditor comes in and receives a Dividend out of the Estate, the Court will put him to his Election either to discharge the Bankrupt, or renounce the Dividend, and this in Conformity to the Law, where if the Creditor will take the Debtor in Execution, he cannot afterwards take Execution by *Fi. Fa.* because (z) the Body is deemed a Satisfaction; but otherwise, if a Creditor takes a *Fi. Fa.* first and levies short, &c. there he may take out a *Ca. Sa.* afterwards and sue both. And here *A.* sued out a Commission of Bankruptcy against *B.* in 1726, and after in 1727, received a Dividend of 2s. 6d. in the Pound, and now lately took *B.* in Execution for the Rest of his Debt, and *B.* petitioned to be discharged, but was denied, by Lord Chancellor (a) *Talbot*.

See "Creditor by Judgment."

(z) Lord Chancellor *Parker* said, that the Reason of its having been frequently ruled that a Creditor could not come in before Commissioners, and then detain the Body of the Bankrupt in Prison, was, because it would be unconscionable that the Creditor should detain the Bankrupt's Body in Custody for Non-Payment of his Debts, and yet seize all his Estate wherewith he was to pay them. *Wil. Rep.* 562. Lord *Hardwicke* delivered himself to the same Effect, on a similar Occasion. *Atk. Rep.* 152. pl. 91.

(a) 7 *Vin. Abr.* 134. pl. 17.

19. *Executor.*

19. *Executor.*

An Executor shall be a Creditor, though he has not a Probate of the Testament before the Bankruptcy (*b*); but he must produce it before the Commissioners will admit him to prove the Debt, and it ought to be (*c*) exhibited to them.

20. By Extent. See "*Creditor by Execution.*" fol. 143.

21. * *Factor.*

A Clothier became Bankrupt, the Question was, whether his (*d*) Factor, having Cloths in his Hands of the Bankrupt's, might thereout retain his Debt, or must come in as a Creditor under the Statute, and accept of a Satisfaction in Proportion with other Creditors, and account for the Cloths he had in his Hands.

(*b*) Resolved in *Show. Rep.* 253. *T. Raym.* 479.

(*c*) We remember an Instance of the Commissioners dispensing with the Probate's being exhibited, on the Executor's proving the Debt, but there being a *Memorandum* taken thereof, the Assignees refused to pay the Dividend without seeing it, by which, when produced it appeared, that the Creditor was not the Executor named therein.

* See 2 *Bur. Rep.* 936. 942.

(*d*) 2 *Vern.* 254. pl. 241.

H

A Merchant

A Merchant remits Goods to his (e) Factor, and about a Month after draws a Bill, then the Principal breaks, against whom a Commission of Bankruptcy is awarded, and the Goods in the Factor's Hands are seized; it has been conceived the Factor must answer the Bill notwithstanding, and come in as a Creditor for so much as he was forced by Reason of his Acceptance to pay.

Lord (f) *Hardwicke* said, that Factors had been excepted out of Statute 21 Jac. c. 19. even contrary to the express Words of it, for the Sake of Trade and Commerce.

22. Foreign Creditors.

The Commissioners shall admit the Proof of any Creditor's Debt who shall reside in foreign (g) Parts by Affidavit, or being

(e) *Mol. de Jure Marit.* 496. B. 3. Ch. 8 S. 8. but he doubts whether Equity would not relieve in such Case.

(f) *Atk. Rep.* 234.

(g) We apprehend that this does not extend either to *Scotland* or *Ireland*; not to the former, by Reason of the *Union*, for by the first Article in the Act (viz. 5 An. c. 8. S. 1.) for that Purpose, "the two Kingdoms of *England* and *Scotland* shall for ever after the first Day of *May* 1707, be united into one Kingdom, by the Name of *Great Britain*; and as to the latter, Lord Chancellor *King* allowed an Affidavit sworn before a Master extraordinary in *Cork*, to be read here. See *Moseley* 78. pl. 50.

of

of the People called Quakers, by solemn Affirmation; and also permit any Person duly authorized by Letter of Attorney of such Creditor, (Oath or Affirmation being made of the due Execution thereof before a Magistrate, where the Party shall be residing, and shall, together with such Creditor's Letter of Attorney, be attested by a Notary Public) to vote (*b*) in the Choice of Assignees, in the Stead of such Creditor (*i*).

23. Gaoler.

A Bankrupt was committed by Commissioners, because he would not answer Interrogatories; the Gaoler gave him Credit for Victuals, he was not relieved, although he came in before Distribution, nor will any Man who trusts him (*k*) after (*l*) his Bankruptcy.

(*b*) See fol. 142. Note (*u*).

(*i*) Stat. 5 Geo. 2. c. 30. S. 26.

(*k*) *A*. lent Money to a Bankrupt after a Commission of Bankrupt sued out against him; *Trevor* and *Hutchins*, Lords Commissioners held, that he could not come in as a Creditor, but was excluded; but Lord *Rawlinson* doubted, and took it to be a new Point not yet settled, and that there were no Words in the Act to exclude him, but Lord *Trevor* and *Hutchins* held, that when the Commission was sued out he was bound to take Notice. 2 *Vern.* 158. 161. it being of Record. 2 Rep. 26. b. see *Bur. Rep.* 33.

(*l*) *Stone* 131.

24. *Guardian.*

The Guardian of an Infant who had maintained him, was by Lord *Hardwicke* admitted a Creditor for the Value of an (*m*) Annuity, and ordered to be received to prove the same as a Debt under the Commission.

25. *By Judgment.*

If (*n*) the Plaintiff recover Damages against the Defendant, and hath (*o*) Judgment, and then the Defendant becomes Bankrupt, the Plaintiff is a (*p*) Creditor.

Where a Bankrupt is in Execution, and the Judgment Creditor has also a Demand

(*m*) The Bankrupt before the Time of his Bankruptcy, entered into an Agreement to pay an Annuity of 20*l.* a Year for the Maintenance of the Infant till his Age of 14; with a Penalty for Non-Payment; by his failing in one of the Payments, the Penalty became forfeited, whereupon the Guardian of the Infant applying to the Court by Petition, it was ordered as above. *Atk. Rep.* 251. pl. 135.

(*n*) *Gro. Car.* 166. pl. 22. *Stone* 130.

(*o*) If the Defendant becomes Bankrupt before Judgment, or after, unless it be final, the Plaintiff shall not add his Costs at Law to his Debt. See "*Creditor by Verdict*."

(*p*) For it is a Debt due to him, and an Action of Debt lies on the Judgment. *Cr. Car.* 166. pl. 22.
against

against him for Rent, Lord *Hardwicke* (q) allowed him to prove his Debt for the Rent under the Commission, notwithstanding he refused to waive his Execution.

Creditors by Judgment, Speciality with Penalty or other Security shall not be relieved upon such Judgment, &c. but for a rateable Part of their just Debt, without Respect to the Penalty (r) contained in such Judgment, Specialty, (s) &c.

If there be an Act of Bankruptcy committed, and a Creditor obtains Judgment subsequent to it, then a Commission is taken out, the Judgment is thereby (t) avoided.

A. seized in Fee, borrowed Money of *J. S.* on a Judgment, and then articted for Sale of the Lands to *B.* and afterwards became Bankrupt. The Question (u) was upon Statute 21 Jac. c. 19. Sect. 9. the Judgment not being executed before the Bankruptcy; 650*l.* Part of the Purchase Money remained unpaid. It was decreed at the *Rolls*, that the Assignees should convey the Premises to *B.* as *A.* had articted to

(q) *Atk. Rep.* 109. pl. 60.

(r) This Act only meant to exclude Creditors from the Benefit of the Penalty as against Creditors (said Lord *Hardwicke*) and not as against the Bankrupt himself. *Atk. Rep.* 78.

(s) Stat. 21 Jac. c. 19. S. 9.

(t) By *Holt* at *Nisi Prius*; 12 Mod. 446.

(u) *Wil. Rep.* 737. pl. 212.

do, and thereupon *B.* to pay the Assignees the 650*l.* for the Benefit of the Creditors, and *J. S.* to come in for a Proportion only with the Rest of them.

But though *J. S.* could not come in upon the Bankrupt's Estate for more than his Proportion with the other Creditors, yet it was insisted, that he should be at Liberty to extend his Judgment against the Purchaser who bought the Land prior to the Bankruptcy, which seemed to be admitted, but that *B.* could not be deemed a Purchaser untill he had paid the Remainder of the Money, which, when paid, must go to the Creditors, and that he was not compellable to pay it, unless upon his having a good Title made him by the Assignees, who had the legal Estate of the Premises assigned to them by the Commissioners, and so (*w*) decreed as above.

26. *Landlord.*

Upon the Equity (*x*) of the Statute 8 *An. c. 14.* (which directs, that, upon all Executions of Goods being upon any Premises demised to a Tenant, one Year's Rent and no more shall, if due, be paid to the Landlord) it hath been held, that

(*w*) *Wil. Rep.* 739.

(*x*) *Atk. Rep.* 104.

under a Commission of * Bankrupt, which is in the Nature of a Statute Execution, the Landlord (y) shall be allowed his Arrears of Rent to the same Amount, in Preference to other Creditors, even though he hath neglected to distrain, while the Goods remained on the (z) Premises.

A Landlord is intitled to distrain the Goods of the Bankrupt, while they remain on the Premises, for his intire (a) Rent in the Arrear, be the *Quantum* what it may, even after Assignment or Sale by the Assignees under the Commission (b).

* Which is not such a *Custodia Legis*, as an Execution. *Atk. Rep.* 104. pl. 55.

(y) Who is considered in an higher Degree than a common Creditor. *Atk. Rep.* 105.

(z) 2 *Black. Com.* 487.

(a) But if the Landlord of a Bankrupt suffers the Assignees to sell off the Goods, he is not entitled to his whole Rent, but must come in *pro Rata* with the other Creditors under the Commission. *Atk. Rep.* 102. pl. 52. 103. pl. 53. nor shall a Mortgagee who has paid the Arrears of Rent on a Bankrupt's Estate, unless he has an Order to stand in the Landlord's Place, be preferred to the Creditors under the Commission. *Atk. Rep.* 103.

(b) Because no Provision is made in Case of Bankruptcy in the Statute, which gives the Landlord a Year's Rent on Executions. *Atk. Rep.* 103. pl. 54. 104. pl. 55. but if he proves his Demand for Rent as a Debt under the Commission, and swears he has no Security, it is a Waiver of the Distress, and he will be confined to his Remedy under the Commission. *Atk. Rep.* 105.

If there are not sufficient Goods upon the Premises to pay the Landlor's Rent, he can then only take what Goods there are upon the Premises, and after they are appraised and sold, as the Law in Cases of Distress for Rent directs; then the Landlord may come in as a Creditor for the Rent remaining due to him, with the Rest of the Creditors under the Commission.

On a Distress for Rent, Goods were sold, and 77*l.* 3*s.* remained in the Constable's Hands, who became a Bankrupt. The Tenant dies, and his Executors pray to be paid this Money by the Assignees, in Preference to other Creditors.

Objection; This comes to the Hands of the Constable by due Course of Law, and a Case was cited before Lord *Macclesfield*, and another in the *Common Pleas*, where Goods were taken in Execution by the Bailiff of *Westminster*, and he died, Judgment and Execution set aside, and ruled that the Widow and Executrix of *W.* should refund the Money, though she alledged he had not assets to pay Specialties.

But *per* Lord Chancellor (c) *Talbot*, both the Cases cited are against Executors, and though the Law makes a Difference between one Creditor and another, yet in Case of Bankruptcy all Creditors are upon

(c) 7 *Vin. Abr.* 74. pl. 7.

an equal Foot; if any Thing remained *in Specie*, it might be otherwise; but here the Money is embezzled by the Constable; so ordered the Petitioner to come in as a Creditor with the Rest.

The Bankrupt Statutes do not make (d) void an Agreement between Landlord and Tenant.

27. Legatee.

If an Executor becomes Bankrupt, the Legatee (e) shall be a Creditor (f).

28. Miller.

At the Time a Commission of Bankrupt issued against M. a Flour Factor, he was indebted to his Miller in a large Sum of Money for grinding Corn, and he had in his Custody a considerable Quantity of Wheat belonging to the Bankrupt, Part ground and Part grinding, besides a great Number of Sacks; Money was due to the Miller for grinding the Corn, he therefore applied

(d) 7 Vin. Abr. 129. pl. 2.

(e) But as an Executor cannot be Bankrupt, in Respect of his Testator's Estate, *Atk. Rep.* 102 pl. 51. it seems that a Legatee never can have Occasion to come in under the Commission; unless in Case of a *Devasavit*.

(f) *Com. Dig.* 527.

to Lord (g) *Hardwicke* to be paid his whole Debt out of the Money arising by the Sale of the Corn and Sacks; but he was of Opinion the Miller had no specific (b) Lien on them, and therefore ought to be admitted a Creditor only *pro tanto* as was due for grinding of Corn in his Hands.

29. Mortgagee.

A Mortgagee of Land, may choose whether he will come in as a Creditor under the Commission or not (i), for such Creditor having a real Security in his own Hands is entirely safe (k), the Commission of Bankrupt reaching only the Equity of Redemption (l); it has been (m) held that he is not entitled to Relief (n) within the Statutes of Bankrupt, for he may help himself by his Mortgage.

(g) *Atk. Rep.* 235. pl. 129.

(b) A Person who repairs a Ship has no specific Lien on it, if delivered to the Bankrupt, otherwise if repaired in a foreign Port, while out upon a Voyage. *Atk. Rep.* 234. pl. 128.

(i) *Stone* 130.

(k) 2 *Black. Com.* 487.

(l) *Rep. Temp. Finch.* 466.

(m) *Com. Dig.* 527.

(n) But it now seems settled that a Mortgagee may prove his Debt under the Commission, but then he must deliver up his Security for the Benefit of the Creditors at large. *Atk. Rep.* 105.

A. made

A. made a Mortgage, and afterwards a Commission of Bankruptcy was taken out against him, and the Commissioners made an Assignment of his Estate, and then *B.* lent 2000*l.* to the Bankrupt on a second Mortgage, having no Notice of the Bankruptcy, and afterwards he got in the first Mortgage; the Lords (*o*) Commissioners held that the prior Mortgage should not protect the Mortgage subsequent to the (*p*) Bankruptcy.

A Mortgage shall have his Interest run on upon a Bankrupt's Estate, because he hath a Right *in Rem*, but as to the other Interest, it ceaseth on (*q*) the Bankruptcy.

Upon a Question whether by the Assignment of some Ships and their Cargoes by Way of Security for a large Sum of Money lent, the Property of the Ship and Cargoes passed?

Lord (*r*) *Hardwicke* said, it would be very detrimental to Trade, as it would deter Merchants from lending Money, if, notwithstanding they should advance a large Sum by Way of Mortgage, the Property was not altered, but subject to the Mortgagor's Creditors under a Commission of

(*o*) Viz. *Trevor, Rawlinson, Hutchins.*

(*p*) 2 *Vern.* 157.

(*q*) 7 *Vin. Abr.* 110. [B. a.] pl. 3.

(*r*) *Atk. Rep.* 156. 170.

Bankrupt, unless the Ships returned before the Commission was taken out, and the Effects were in the actual Possession of the Mortgagees, that the Construction of * Stat. 21 Jac. c. 19 S. 10. (s) 11. was a Point of very great Consequence, and he did not remember in the Court of *Chancery*, or while he set in the *King's Bench*, were (t) ever made a Point in any Case; that where Bills of Sale were made of Goods and the Purchaser suffered the Bankrupt to continue in Possession, it was plainly within the Letter of the Statute, but he did not think this could be construed to extend to a bare Loan of Money upon Goods by Way of Mortgage, for the Words in the Clause are, for Goods sold *for a valuable Consideration*, and *valuable Consideration* was most properly applicable to an absolute

* Which he said was darkly penned. *Atk. Rep.* 159.

(s) "For that it often falls out, that many Persons before they become Bankrupts, do convey their Goods to other Men upon *good Consideration*, yet still do keep the same, and are reputed the Owners thereof, and dispose the same as their own." Stat. 21 Jac. c. 19. S. 10. If therefore any Bankrupt shall for the future, by the Consent and Permission of the true Owner and Proprietary, have in his Possession, Order and Disposition, any Goods or Chattels, whereof he shall be reputed Owner, and take upon him the Sale, Alteration, or Disposition as Owner, the Commissioners shall have Power to sell and dispose of the same for the Benefit of the Creditors. Stat. 21 Jac. c. 19. S. 11.

(t) *Atk. Rep.* 163.

Sale;

Sale; that the original Agreement was, not immediately to take Possession of the Ships and Cargoes, but at a future Day, and if the Bankrupt had not a Right from the Time of the Agreement, to exercise such Power over them as he before had, but was now become subject to the Mortgage, then this Case was not within the Statute.

That there was Nothing more common than Assignments of Ships which were out upon their several Voyages, as a Security for Money, and yet the Assignee did not look upon it, that he had any Property, but the Assignor directed the Master of the Ships as to the Voyage, and every Thing necessary, and, that if Contracts of this Kind had been considered as falling within Sect. 10. and 11. of Stat. 21 Jac. c. 19. this Case must have happened frequently, and would not have been the first Time of it's being made a Point in the Courts in *Westminster-Hall*.

Lord (u) *Talbot* adjudged the following Case, upon the particular Circumstances of it, to be within Stat. 21 Jac. c. 19. viz.

An owner of Hoys mortgaged them, and after so doing was suffered by the Mortgagee to Use them for three Years together, and had Money lent him upon the Credit of being Owner.

(u) *Atk. Rep.* 157. 161. 170.

Lord (w) *Hardwicke*, and also Lord* *Mansfield* were of Opinion, that the above Clauses were never meant to extend to (x) Mortgages or Pledges for Money or Goods, because it was impossible in an Assignment beyond Sea, that they could be delivered over to the Assignee.

30. *By Note of Hand.*

A. gives a promisory Note for 200*l.* payable to *B.* or Order; *B.* indorses it to *C.* who indorses it to *D.* *A. B.* and *C.* became Bankrupt, and *D.* received 5*s.* in the Pound on a Dividend made by the Assignees of *A.* Lord Chancellor (y) *King* ordered *D.* to come in as a Creditor for 150*l.* only, out of *B.*'s Effects.

Where Drawer and Indorfor are both become Bankrupts, and the Creditors have received a Composition of six Shillings in the Pound under the Commission against the Indorfor, Lord (z) *Hardwicke* at first seemed to think that they might still prove their whole Debt under the Commission

(w) *Atk. Rep.* 163.

* 2 *Bur. Rep.* 941.

(x) In the Court of *Chancery* Mortgagors having much the largest Share in the Estate, are considered as Owners, and having the Property in it, and for that Reason Mortgages are not within the Intention of this Act. *Atk. Rep.* 164. Mr. Just. *Burnet. contra. Atk. Rep.* 170.

(y) 2 *Wil. Rep.* 407. pl. 129.

(z) *Atk. Rep.* 107.

against

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against the Drawer, but upon looking into the above Case and also another to same (a) Effect [which see fol. 125, 126.] he altered his Opinion, and was very clear that the six Shillings must go in Discharge of so much of the Debt, and that they could only prove the remaining fourteen Shillings under the Drawer's Commission.

If a Man draws a promisory Note, before he becomes Bankrupt, though it is not made payable till *after*, yet it *seems* that the Debt incurred thereby may be *claimed immediately* and *proved* when the Note becomes payable; otherwise the Distinction of "*Debitum in præsentì, solvendum in futuro*" would be (b) absurd.

Lord *Hardwicke* (c) admitted a Person who took no more for the Discount of Notes than at the Rate of five Pounds *per Cent. per Ann.* to prove the whole Amount of the Notes, under a Commission of Bankrupt against the Drawer, without obliging him to deduct what he had received of the Indorser for the Discount, and his Lordship said, that as the Commissioners had established it as a Rule, that Note Creditors had no Right to prove Interest upon them, unless it was expressed in the Body of the

(a) 2 *Wil. Rep.* 89. pl. 21.

(b) See 2 *Stra.* 949. 2 *Barnard. K. B.* 251. 255.
"Contingent Creditors." fol. 131.

(c) *Atk. Rep.* 150. 151.

Notes, he would not break in upon the Rule; for he said that even at Law, where Notes were for Value received, and Interest was not expressed, the Jury did not give the Plaintiff, in an Action upon the Notes, Interest for them, but by Way of Damages only; and that Commissioners of Bankrupt could not award Damages, and therefore the Role they had established was a very reasonable one.

31. *Packer.*

Lord (d) *Hardwicke* said, that a Packer might retain Goods till he was paid the Price and Labor of Packing, and that if he had another Debt due to him from the same Person, the Goods should not be taken from him till he was paid the whole, notwithstanding the Debtor was become Bankrupt.

32. *Parishioner.*

An Inhabitant of a Parish was admitted a Creditor on Behalf of himself, and the other Inhabitants, under a Commission of Bankrupt against a Person, who had been for several Years a Collector of the Land Tax, and Window Duty for the Parish, on the Balance of Accounts for Monies re-

(d) *Atk. Rep.* 228. pl. 125. id. 237.

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Ch. 3. Parishioner. Pawnee. 161

ceived by him in that Capacity, from several Parishioners, and not paid to the Chamberlain of *London*; and Lord *Hardwicke* (e) was of Opinion that one Inhabitant might prove for himself and the Rest of the Parishioners, because he might swear that neither he, or the Rest of the Parishioners to his Knowledge or Belief had received any Security or Satisfaction.

33. Partner. See "*Joint and separate Creditors*" fol. 97.

34. Pawnee.

A Man who has Goods pledged to him for his Money, before the Bankruptcy, need not come in (f). For personal Debts, where the Creditor has a Chattel in his Hands, as a Pledge or Pawn for the Payment, are entirely safe (g).

If a Trader, being indebted on simple Contract, pledges Goods for the Payment, and promises Interest, such Creditor shall have Interest, even between the Act of Bankruptcy, and the Commission (h).

Lord *Hardwicke* (i) said, that in Cases of Pawns, the Pawnee had only a special

(e) *Atk. Rep.* 111. pl. 62. 2 *Kel.* 291.

(f) *Com. Dig.* 527.

(g) 2 *Black. Com.* 487. *Atk. Rep.* 236.

(h) 7 *Vin. Abr.* 110. [B. a.] pl. 1.

(i) *Atk. Rep.* 156.

(k) Property in them, in Case they should not be redeemed within the Time required.

35. *Purchaser of Land.* See "*Creditor by Judgment.*" fol. 148.

36. *Relations.*

The Commissioners usually look upon the Debts of the Relations of Bankrupts with a jealous Eye, especially if they happen to be considerable, and accordingly are much more nice in their Examination of them, than they generally are of those of other Creditors; the Reason given for it is, that the Affinity and Connection between the Parties, render the Demand suspicious; we have often been much surprized at this Partiality, for such we cannot help calling it, since we have observed other Circumstances equally suspicious as Affinity and Connection, in the Demands of other Creditors pass unattended to. As to the Largeness of the Demand, who but Relations would venture large Sums? the Relationship, though the only Objection, is a full Answer and Reason for the Commissioners not being stricter than usual with them;

(l) A Pawnbroker by Reason of the special Property he has in the Pledge may assign it. *Ow.* 124. but *Bac.* Abr. 158. and *Bulstr.* 31. seem *contra.*

because

because it is to be presumed Relations, no more than Strangers, would lend their Money, if there was a Likelihood of loosing it; when there is not, it is natural (though perhaps not prudent) to omit many of the legal Formalities requisite on such Occasion; besides, the Debts of Relations are commonly Money lent, whereby their Loss becomes much heavier than that of other Creditors for Goods sold and delivered, on which they have a very considerable Profit, in Comparison to Interest at 4 or 5 *per Cent.* or perhaps no Interest at all; but it may be thought that Relationship is such a Fascination, that it will not even hesitate at Perjury.

It has been even said, if you intimate to a Relation, who is indebted to you, that he need not make himself uneasy on Account of your Demand, you never intending to trouble him for it, and afterwards he becomes Bankrupt, that you are bound by such your Intimation or Promise, even to Strangers, viz. to all his Creditors; such an unjust and injurious Attempt scarcely deserves Notice, but as we know it has been made, and (we are sorry to say it) met with much more Countenance than it deserved, we will here give it an Answer.

What Motives has a Relation to make such a Promise to Strangers? According to this Construction, I may prejudice a Relation

lation and advantage a Stranger, whose Dividend by this Means I may encrease, and preclude myself the Opportunity of signing a Relation's Certificate, and giving him the Share of my Divided under the Commission.

We remember an Instance of the aged Mother of a Bankrupt Son, coming to prove a Debt under the Commission; the other Creditors objected to her Demand, they intimated the Notes were *forged*, that no Consideration was given for them, and many other malicious Allegations (for they were not on Oath); upon this the Commissioners, after having examined her very closely, agreed to her being admitted; but this was not *agreeable* to the Creditors, they therefore said she had embezzled the Bankrupt's Goods, and till that was settled to their Satisfaction, she ought not to be allowed to prove her Debt; this occasioned another Examination, though neither was this Charge on Oath; the Mother said in Answer to it, that on her Son's marrying some Years ago, she removed to this House, which she furnished with her own Goods she brought with her, and that as he was now Bankrupt she intended to take them back again where she thought proper; and further, that she had lived with her Son ever since he was married in the same House, in which her Goods

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Goods were; this Case the Commissioners mistook; for they seemed of Opinion, with the Creditors, the Clerk, and *Messenger* to the Commission (the *last* of whom is often consulted and advised with by the *Quorum*) was a fraudulent Possession within Stat. 21 Jac. c. 19. S. 11. but to us it appeared to be the Mother's Possession of her own Goods, and that the Son was never in Possession of them. On an Application to Lord (l) *Hardwicke* to set aside a Bill of Sale of Shop Goods, &c. executed by a Father to his Son previous to the Father's Bankruptcy, on a Suggestion, that it was within the Stat. 21 Jac. and therefore fraudulent as against Creditors; he said, there was no Foundation for it, because it was many Months before the Bankruptcy, and followed by the Possession of the Son; we infer from this Case, that if the Son's Possession gained him the Property of his Father's Goods, that by Parity of Reason, the Mother's Possession in our Case, would secure to her the Property of her own Goods.

37. Seller of Land. see "*Vendee*."

(l) *Atk. Rep.* 93. pl. 41.

38. Servants.

38. *Servants.*

Notwithstanding the Rules of Law, as to Bankrupts, reduce all Creditors to an (m) Equality, yet the Commissioners, in the Case of *menial* Servants, always recommend the Creditors to direct the Assignees to pay them their *full* Wages; Lord Chancellor *Cowper* (n) said, it was unreasonable that Servants should come in with the Rest of the Creditors; however, we think it prudent and safe for Assignees where the Wages of Servants are very much in Arrear, or where the Sums demanded are too considerable to be esteemed the Wages of *menial* Servants, and consequently not within the Recommendation of the Commissioners; to advertize in the *Gazette* a Meeting of the Body of the Creditors, in order to take their Sense of the Matter, to reduce it into Writing, and to get it signed by the major Part in Value of such of them as attend the Meeting; this Procedure will be not only an Authority, but likewise a Justification and Indemnity to the Assignees, in Case of any after Disputes.

It has been said that Assignees can answer paying Servants *one Year's* Wages, but no

(m) 7 *Vin. Abr.* 127. *Atk. Rep.* 233.

(n) 2 *Eq. Cas. Abr.* 396. pl. 3.

more

more, without any particular Direction from the Creditors for that Purpose; but we conceive this to be a mere vulgar Notion, founded neither in Reason or Justice; to say, that the Commissioners recommend the Payment of *all* Wages due to Servants, because it is hard for them to come in only for a Share of the Bankrupt's Effects, with the other Creditors, seems most absurd, if a Servant whose Wages are considerably in Arrear is not entitled to the Benefit of the Recommendation; since it may prove more beneficial to the Servant to receive a *Dividend* on a *long Arrear* of Wages, than the whole of a *short one*.

39. *Sureties.*

A and *B.* were Sureties for one *C.* for the Payment of Money, and had Counter Bonds to save them harmless. The Money was not paid at the Day, and the Sureties paid it, and afterwards *C.* became Bankrupt; and whether they were Creditors within the Statute was the Question; and it was resolved that they (*o*) were, and Lord *Hardwicke* (*p*) said, that the Surety of a Bankrupt who payed the Debt, after disputing it some Time, being put to an

(*o*) *Cro. Jac.* 127. pl. 17.

(*p*) *Atk. Rep.* 262. pl. 141.

Expence thereby, should, notwithstanding he disputed the Payment of a just Debt, be admitted to prove the Expences of such Suit, under the Commission against the Principal.

Where (*q*) there is Principal and Surety, and Surety pays off the Debt, he is entitled to have an Assignment of the Security, in order to enable him to obtain Satisfaction for what he has paid over and above his own Share.

40. Trustee.

The Debt of a petitioning Creditor is subject to some peculiar Qualities, to which that of other Creditors does not seem to be, viz. it must be a *legal* (*r*) Debt, it must be contracted (though it need not be (*s*) due) before (*t*) the Act of Bankruptcy committed; and therefore we apprehend that notwithstanding a Commission of Bankrupt is superseded by Reason of the petitioning Creditor's Debt being defective in any of the above Particulars, yet if a valid Commission be afterwards obtained, such

(*q*) By Lord Hardwicke. *Atk. Rep.* 135.

(*r*) *Wil. Rep.* 783. *Sel. Cas. of Evid.* 161. 2 *Kel.* 6. pl. 8. 2 *Stra.* 899.

(*s*) *Stat.* 5 *Geo.* 2. c. 30. S. 22.

(*t*) *Wil. Rep.* 783. *Cas. Temp. Talb.* 243. *Sel. Cas. of Evid.* 147. 2 *Stra.* 744.

petitioning

petitioning Creditor will be intitled to Relief under it; as Trustees, Assignees of Bonds, &c. who are not legal but only equitable Creditors, and whose Debts therefore will not intitle them to take out a Commission. The *Cestui que* Trust ought to join in the Deposition with his Trustee, and the Trust Deed should be exhibited to the Commissioners.

41. Vendee.

Mr. Justice (*u*) Burnet said, that if a Vendee paid Money, and did not insist upon a Delivery of the Goods, he confided in the Credit of the Vendor, and not in any real or particular Security, and ought to come in, under the Commission, as much as any other Person who placed a Confidence in the Bankrupt, and not in any other Security.

A. (*w*) sells Land to *B.* who afterwards becomes Bankrupt, Part of the Purchase Money not being paid, *A.* shall not be bound to come in as a Creditor under the Statute, but the Land shall stand charged with the Money unpaid, though there be no Agreement for that Purpose.

(*u*) *Atk. Rep.* 170.

(*w*) *Vern.* 267, 268.

42. *By Verdict.*

Lord *Hardwicke* (x) asked some of the Commissioners of Bankrupt who happened to be then present in Court, whether if a Person who had a Verdict for his Debt, and was prosecuting to Judgment, or had recovered (y) Damages in the Action, and *was going on to execute a Writ of Inquiry*, but before either of them was compleated, a Commission of Bankrupt was taken out against the Defendant, the Costs and Charges of such prosecuting to Judgment, or such Assessment of Damages on a Writ of Inquiry had been allowed to be proved under a Commission?

The Commissioners informed the Court that it was the constant Practice to refuse such Costs being proved.

43. *Wife*, see "*Book-keeper.*" fol. 128.

For more concerning "*The Proof of Debts*" see "*Depositions of Creditors*" in "*The Appendix.*"

(x) *Atk. Rep.* 140. pl. 81.

(y) Mr. Baron *Atkins* must certainly have mistaken Lord *Hardwicke*, for Damages cannot be recovered previous to a *Writ of Enquiry*.

C H A P. IV.

The Appointment, Choice, and Removal of the Assignees.

THE Commissioners (z), as often as they shall see Cause, for the better preserving and securing the Bankrupt's Estate, may immediately appoint one or more Assignee (a) or Assignees of the Estate and Effects or any Part thereof.

Lord *Hardwicke* (b) said, that though there might be Occasion sometimes for temporary Assignments, for the better preserving the Bankrupt's Estate, yet Commissioners were not obliged by the above Clause in the Statute relating to temporary Assignments, to appoint an Assignee of the whole Estate, because the Words are in the disjunctive "immediately to appoint one or more Assignee or Assignees of the

(z) Stat. 5 Geo. 2. c. 30. S. 30. What Dr. *Blackstone* says about the Choice of Assignees affects the temporary Assignees only. See 2 *Black. Com.* 482. 485.

(a) But they are removeable by the Creditors at the Choice of Assignees, and liable to forfeit 200*l.* with full Costs of Suit, in Case upon Removal they neglect upon Notice to deliver to the new Assignees the Bankrupt's Estate and Effects. Stat. 5 Geo. 2. c. 30. S. 30.

(b) *Ark. Rep.* 96.

Estate and Effects *or* any Part thereof." And further, that as by leaving out the Copyhold Estate of a Bankrupt in a temporary Assignment, the Creditors would run no Risque with Regard to the Crown, for an Extent would not affect it, it would be adviseable to omit them in subsequent Assignments.

It is usual for the Commissioners *previous* to the Choice of Assignees (in order to prevent any Reflection being cast on the Characters of the Assignees as doubting their Credit) to desire they will agree among themselves, in whose Hands the Monies arising from the Bankrupt's Estate, as often as the Assignees shall receive 100*l*. thereof or upwards, shall be placed, pursuant to the following Statute.

Before (c) the Creditors shall proceed to the Choice of Assignees, the major Part in Value of the Creditors present shall, if

(c) Whereas by Reason of the Monies which are lodged in the Hands of Assignees until a Dividend is made, Assignees do sometimes delay the dividing thereof, to the very great Prejudice of the Bankrupt's Creditors, for preventing whereof, and to the End Assignees may make speedy Dividends of the Estate and Effects of such Bankrupts, it is enacted as above. Preamble to the above Clause. In order to enforce the Execution of this Law, it is adviseable that there should be a Covenant from the Assignees to the Commissioners, in the Assignment, that they will pay the Money into such Hands as the Creditors shall direct.

they

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they think fit, direct how, and with whom, the Monies to be received out of the Bankrupt's Estate shall remain until the same be divided, to which Rule the Assignees shall conform as often as 100*l.* shall be got in, and they shall be indemnified (*d*).

It is also as usual for some of the Commissioners to add that though the Bank (*e*) of *England* is *expressly* directed by the above Clause to receive the Bankrupt's Estate, yet that the Bank do not think it worth their while to open an Account for that Purpose, and refuse so to do. We always considered this Declaration a very extraordinary one, even when we had no Doubt of the *Truth* of it; we thought it rather indecent for Gentlemen invested with so great Power and Authority as Commissioners of Bankrupts are, to declare *ex Officio*, that one of the most respectable Corporations in the Kingdom, instituted, continued, and supported by Parliament, peremptorily declined to obey the *express* Injunctions of the Legislature; but as neither the *Bank* nor any other particular Place is mentioned in the Act, it is a Matter of Astonishment to us how the above Declaration has passed so often unnoticed or unanswered at *Guild-*

(*d*) Stat. 5 Geo. 2. c. 30. S. 32.

(*e*) Lord *Hardwicke* has directed Assignees to deposit the Money arising from the Sale of the Bankrupt's Effects in the Bank in their Name. *Atk. Rep.* 133.

ball. We have observed the Commissioners often express themselves very tenacious of, and zealous for the Dignity of the Great Seal, and of the Respect due to them as acting under it; such Zeal may be very proper, but we must confess we think as much Regard at least, is equally due to their *Oath* of Office, under which they also act, and whereby they have sworn that they will “according to the best of their *Skill* and *Knowledge* execute the several Powers and Trusts reposed in them as Commissioners of Bankrupts.” Now it seems certain that they have either *not even so much as read*, or if they have, that they *cannot retain* or *do not understand* the Bankrupt Statutes; if so, are they those judicious Persons whom my Lord (f) *Coke* says they ought to be? Or what is more material, have they used their Endeavours so to be according to their Promise made by them on Oath; though we may be thought rather too severe to declare such Persons incapable to be any longer Commissioners, yet Lord (g) *Hardwicke* was pleased to *remove Commissioners* for taking more than their Fees, and ordering Monies to be charged for their eating and drinking, but

(f) 4 Inst. 277.

(g) 7 Vin. Abr. 77. pl. 3.

what

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what were those Misdemeanors in Comparison to the above?

The Commissioners (*b*) shall forthwith, after they have declared the Person, against whom the Commission shall issue, Bankrupt, cause Notice thereof to be given in the *London Gazette*, and shall appoint a (*i*) Time and (*k*) Place for the Creditors to meet, in order to choose Assignees of the Bankrupt's Estate and Effects.

So (*l*) that they are immediately to appoint a Time and Place for the Choice of Assignees, because it may be necessary to take Care of the Bankrupt's Estate and Effects; and it must not be laid down as a Rule, that, because some of the Creditors are abroad, and beyond Sea, therefore they must at all Events have an Opportunity of voting in the Choice, and the Creditors be directed to proceed to a new

(*b*) Stat. 5 Geo. 2. c. 30. S. 26.

(*i*) Which Time we think ought always to be fourteen Days at least from the Notice in the *Gazette*, of the issuing the Commission, in order to give all the Bankrupt's Creditors, in whatever Part of the Kingdom they may happen to reside, an Opportunity of being present at, and of voting in the Choice.

(*k*) Which Meeting for *London*, and all Places within the Bills of Mortality, shall be at the Guildhall of the said City. Stat. 5 Geo. 2. c. 30. S. 26.

(*l*) By Lord Hardwicke. *Atk. Rep.* 92.

one, if this was to prevail, the Choice must be postponed to a great Length of Time, which would be directly contrary to the Act of Parliament; and therefore the Rule is, that the Assignees ought to be continued, unless some Objection can be shewn with Regard to the Substance or Integrity of the Person who is chosen Assignee, but it would be adding to the Expence, to make two Choices of Assignees instead of one.

Precedents were searched but no Case could be found, where it had been ordered that Creditors should proceed to a second Choice, upon a Suggestion, merely, that some of them lived remote from *London*, or were out of *England*, and besides it would be a dangerous Rule, and therefore Lord *Hardwicke* continued the Assignee who was already chosen.

Lord Chancellor (*m*) *Hardwicke* said that the Commissioners upon the Day for Choice of Assignees were not critically to examine into the Debt, but to admit Creditors upon their (*n*) Oath for what they swore was due to them, as they would still be liable to an Account afterwards, and that besides, it would be extreamly hard to exclude Persons who might perhaps be the greatest

(*m*) *Atk. Rep.* 70. 71.

(*n*) *Atk. Rep.* 153. pl. 92.

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Creditors, till the Account was settled, which might be the Work of several Years, and it might be necessary and convenient, that Assignees should immediately be chosen, and besides, (o) that it was not necessary that the Assignees should have proved any Debts under the Commission, or that they should be even Creditors at large of the Bankrupt.

The (p) Commissioners shall at this Meeting ascertain the Costs and Expences of suing forth and prosecuting the Commission, and by writing under their Hands shall direct and order the Assignees of the Bankrupt's Estate, to pay and reimburse the petitioning Creditor his said Costs and Charges, out of the first Monies or Effects of the Bankrupt, that should be got in and received under the Commission.

Whereas (q) it may be found necessary, that as well Assignments of Bankrupt's Estates already made by Commissioners, as Assignments hereafter to be made pursuant to the Choice of Creditors, should

(o) Lord *Hardwicke* said, that if there did not appear to the Commissioners any reasonable Objection to the Fairness of the Debt, the Creditor ought to be admitted; but that if they (though the Creditor had made a positive Oath) had just Grounds to doubt the Fairness of the Debt, they did right to admit it only as a Claim. *Atk. Rep.* 71.

(p) Stat. 5 Geo. 2. c. 30. S. 25.

(q) Preamble to Stat. 5 Geo. 2. c. 30. S. 31.

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be vacated, and new Assignments be made of the Debts and Effects unreceived and not disposed by the then Assignees, to other Persons to be chosen by the Creditors, the Great (r) Seal may, upon Petition of any (s) Creditor, make such Order (t) therein as shall be just and reasonable.

The Commissioners (u) shall cause public Notice to be given in the two *London Gazettes* immediately following the Removal of the Assignees, and the Appointment of others, that the former Assignees are removed, and others appointed in their Stead, and that the Bankrupt's Debtors do not pay their Debts to the Assignees removed.

Lord (w) *Hardwicke* ordered Assignees under a Commission to be removed from being Assignees of the Bankrupt's Estate and Effects, by Reason of the Misbehaviour of the Commissioners in the said Commis-

(r) Stat. 5 Geo. 2. c. 30. S. 31.

(s) Or on the Petition of the Assignee himself; but it seems no Order can be made on this Application, unless an *Assignment* has been *actually* executed by the Commissioners to the Assignee. See and consider the Preamble to S. 31. of this Statute.

(t) In case a new Assignment shall be ordered to be made, Bankrupt's Debts, Effects, and Estate, shall be thereby effectually and legally vested in the new Assignees, who may sue in *their* [not their own] Names, and may discharge Actions and give Acquittances as former Assignees. Stat. 5 Geo. 2. c. 30. S. 31.

(u) Stat. 5 Geo. 2. c. 30. S. 31.

(w) 7 *Vin. Abr.* 77. pl. 3.

on,

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on, and that the said Bankrupt's Creditors should proceed to a Choice of new Assignees in their Room, and for that Purpose, that after the said Commission should be renewed, an Advertizement should be published in the *London Gazette*, appointing a Meeting of the Creditors of the said Bankrupt for the Choice of such new Assignees, and after such Choice should be made, his Lordship did order that the surviving Commissioners, or any three of them, and the said Assignees so removed, should join with the major Part of the Commissioners, to be named in the renewed Commission, in making an Assignment of the said Bankrupt's Estate and Effects, to the new Assignees, so to be chosen; and did further order, that forthwith, after the Execution of such Assignment, the said old Assignees should respectively deliver over to the new Assignees all the Effects of the said Bankrupt, remaining in *Specie*, in the Hands, Custody, or Power, of them, or any of them, upon Oath; and also all Books, Papers, and Writings in their respective Hands, Custody, or Power, relating to the said Bankrupt's Estate or Effects upon Oath; and that the said old Assignees should deliver Possession of the said Bankrupt's real Estate to the new Assignees.

Lord

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Lord *Hardwicke*, (x) upon Petition of Creditors, ordered an Assignee under a Commission of Bankrupt, who became Bankrupt himself afterwards, to be removed, from being an Assignee under the Commission, on Account of his own Bankruptcy, and gave the Creditors Liberty to proceed to a new Choice, and further ordered, that not only the Assignee petitioned against, but also his Assignees should join with the Commissioners in executing an Assignment to the new Assignees under the Commission against the Assignee removed.

(x) *Atk. Rep.* 27. pl. 43.

CHAP.

C H A P. V.

The Conveyance and Sale of the Bankrupt's Estate and Effects.

WE will consider the Power and Authority of the Commissioners to dispose of the Bankrupt's Estate and Effects.

1. As to his real Estate.
2. As to his personal Estate.

1. As to his real Estate.

This seems reducible to the following Subdivisions, viz.

1. *What the Commissioners may sell.*
2. *What they cannot: and*
3. *In what Manner the Sale shall be.*

1. What real Estate the Commissioners may sell.

The (y) Commissioners have full Power by their Discretion, to dispose of all the Bankrupts Lands, Tenements and Here-

(y) Stat. 13 El. c. 7. S. 2. This Statute Lord Hardwicke said, gave the Commissioners an *equitable* as well as a *legal* Jurisdiction, and that it had been so construed ever since. *Atk. Rep.* 77.

ditaments,

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ditaments as well Copyhold (z) as Freehold, which he had in his own Right before he became Bankrupt, or which (a) descended or came to him at any Time afterwards, before the Debts to the Creditors were fully satisfied or agreed for; and all Lands and Tenements which were pur-

(z) For they are within all the Statutes of Bankrupts, 2 *Com. Dig.* 417. The Vendee of a Copyhold is to pay the Lord his Fine, and be admitted. Stat. 13 El. c. 7. S. 3. And if the Lord refuse upon Tender of a competent Fine, the Vendee may enter. *Stone*. 127. *Billingsh.* 148. The Copyhold is vested in the Bargainee before his Admittance, though he cannot enter, or take the Profits, and he shall avoid all mesne Acts between the Sale and Admittance. 2 *Com. Dig.* 417. An Assignee under a Commission of Bankrupt of a Copyhold Estate is a Vendee within 13 El. c. 7. and not the Purchaser from the Assignee of such Estate. By Lord *Hardwicke*. *Atk. Rep.* 96. And he was of Opinion that an Assignee under a Commission of Bankrupt, must surrender a Copyhold Estate to a Purchaser, though it is very hard the Lord should exact two Fines, but no Person can make a common Law Conveyance of a Copyhold; it must be by Surrender; the Commissioners, by Stat. 13 El. c. 7. have no Interest [2 *Shorr.* Rep. 157.] in the Bankrupt's Lands, but only a Power to convey, and at first the Commissioners made Sale to the Creditors, but that was found inconvenient, therefore they made general Assignments to Trustees to distribute the whole. *Atk. Rep.* 95. 96.

(a) Stat. 13 El. c. 7. S. 11. Cr. Car. 568. pl. 6: Lord *Hardwicke* said, that if any future real Estate descended to a Bankrupt after the Execution of the first Bargain and Sale, there must be a new one. *Atk. Rep.* 253. Lands descended to Bankrupt after Distribution

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chased by him (b) jointly with his (c) Wife, Children or Child, to his own Use, for such Interest therein as he might (d) lawfully part with; or purchased with any other Person upon secret (e) Trust for his own Use.

They may sell all the Lands and Tenements which the Bankrupt had at the Time of his Bankruptcy in Fee, for Life, or for Years; all Rents, Annuities and (f) Offices,

bution are subject to a new Sale and Distribution. *Billingsb.* 118. but *Stone* 132. is expressly contrary.

(b) If two be seized jointly, and one becomes Bankrupt and dies, his Part shall be sold, and there shall be no Survivorship in this Case. See the Reasons in *Stone* 126. *Billingsb.* 111. *Good.* 89. If the Bankrupt be Jointenant in Fee, for Life, or Years, the Commissioners may sell a Moiety. *Com. Dig.* 530.

(c) If he be seized in Right of his Wife, they may sell during the Coverture. *Com. Dig.* 530. yet, if a Purchase in the Name of himself, and his Wife, and Son, was before his trading, the Commissioners cannot sell it. *Cro. Car.* 550.

(d) *Gibson* (late Bishop of London) and Doctor *Burn* both hold, that if a Patron becomes Bankrupt, the Commissioners may sell the Advowson, but if the Church be void at the Time of the Sale, the Vendee shall not present to the void Turn, but the Bankrupt himself, because the Turn of a Church is not valuable. 2 *Gibs. Cod.* 794. *Burn's Eccles. Law.* 98. 4 *Bac. Abr.* 465. And *Billingshurst* says, that without Doubt, if the Commissioners present any one for Money, it is Simony. *Billingsb.* 123. See *Good.* 116.

(e) *Stone* 133. *Billingsb.* 114.

(f) By these are intended Offices of Inheritance, &c. as Warden of the Fleet, &c. or a Goaler by Inheritance, and not Offices of Trust, for by Stat. 5 & 6 any

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any future (g) Interest, as, a Term to commence in *futuro*; Land (h) devised to him; his Wife's (i) Estate vested in Trustees before Marriage for her separate Use; all Lands, (k) Tenements, Hereditaments,

Ed. 6. c. 16. [which prohibits the Sale of Offices of Justice] they cannot be sold; besides, they are indivisibly annexed to the Person. *Billingh.* 122. *Stone* 126. See 9 Rep. 48. a. *Good.* 87. Lord King declared that the Office of Serjeant at Mace was not saleable, as it concerned the Execution of Justice; nor the Place of one of the Clerks of the Six Clerks Office. *Atk. Rep.* 212. But the Office of Under Marshall of the City of London, as it does not concern the Administration of Justice, is not within Stat. 5 & 6 Ed. 6. c. 16. and may therefore be sold. By Lord Hardwicke; *Atk. Rep.* 210. pl. 117. And he said that notwithstanding *Stone* and *Billinghurst* in their Readings on these Acts [34 & 35 H. 8. c. 4. and 13 El. c. 7.] say, that only Offices of Inheritance are within the Meaning of them; yet he was of Opinion, that their Construction was contrary to the express Words of the Acts, for that Terms of Years [in Stat. H. 8.] related directly to Offices, not in Lands only, but all other Offices. *Atk. Rep.* 213. It is observable, that *Stone's* Reading is *professedly* on Stat. 13 El. c. 7. and on *that Statute only*; that *Billinghurst* but *just* mentions Stat. H. 8. and that Lord Hardwicke himself on another Occasion declared, that "the Statute of Henry the 8th had been so much altered by subsequent Acts, that it did not deserve any Consideration." *Atk. Rep.* 77. *Quere* therefore the above *Dictum* of Lord Hardwicke, concerning *Stone* and *Billinghurst*.

(g) *Com. Dig.* 530.

(h) *Stone* 125. *Good.* 88.

(i) 10 Mod. 247. *Wil. Rep.* 248. but *Wil. Rep.* 458. seems *contra*.

(k) Stat. 1 Jac. c. 15. S. 5.

Annuities,

Annuities, Offices, and Fees, conveyed, or caused to have been conveyed by him to any of his Children, or other (*l*) Person, or into any other Men's Names, as amply as if the Bankrupt, at the Time of his Bankruptcy, had been actually seized in his own Name of the like Interest; and also Lands whereof he shall be reputed (*m*) Owner, and with the Consent of the true Owner, shall take upon him the Sale and Disposition, though formerly conveyed by him to such true Owner for valuable Consideration, and all Lands extended (*n*) after his becoming Bankrupt, on Pretence of his being Accountant, or indebted to the King, if upon Examination of the Commissioners on Oath, it be found, such Debt be due to such Accomptant or Debtor, on a Contract not originally made between

(*l*) So, if they are conveyed before his Bankruptcy, in Consideration of Marriage, to the Use of himself, and his Wife, though the Wife is not named by the Statute, for she is within the Intent. *Style. 289. B.* in 1718, *after Marriage*, conveyed his real Estate to Trustees in Consideration of 5s. and other valuable Considerations, in Trust for himself for Life, to his Wife for Life, then to his eldest Son, if he survived his Father and Mother, and so to his second Son, &c. *B.* afterwards became Bankrupt; Lord *Hardwicke* said, that this Conveyance fell directly within this Clause of the Statute. *Atk. Rep. 93. pl. 41.* See *Bur. Rep. 472.*

(*m*) Stat. 21 Jac. c. 19. S. 11.

(*n*) Stat. 21 Jac. c. 19. S. 10.

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him and the Bankrupt, but made with or in Trust for some other Person; they may sell a (o) Possibility of Right belonging to the Bankrupt; and any (p) of his Lands or Tenements, wherein he shall be seized of an Estate (q) Tail, in Possession (r), Remainder, or (s) Reversion, unless the Remainder or Reversion shall be in the Crown, of the Gift of the Crown, and such Sale shall be good against all such Issues in Tail, Remaindermen, and Reversioners, whom the Bankrupt himself might have barred by common Recovery or other Means. They (t) may sell an Estate, which the Bankrupt has, to commence upon a Contingency; and all Equities of (u) Redemp-

(o) *Wil. Rep.* 385. 3 *Wil. Rep.* 132. pl. 30. *Good.* 83. 84. By the last Act the Bankrupt is to deliver all the Estate he is interested in, or whereby he hath or may expect any Profit, Possibility of Profit, &c. *Stat.* 5 *Geo.* 2. c. 30. S. 1.

(p) *Stat.* 21 *Jac.* c. 19. S. 12. *Stone* 125. 126.

(q) They may sell a Copyhold intailed, which by Custom may be intailed and cut off, otherwise, if there be no such Custom. *Stone* 127. *Billingsh.* 148.

(r) Lord *Hardwicke* observed, that this was but a slight Advantage to Creditors. *Atk. Rep.* 79.

(s) *Stone* 128.

(t) *Stat.* 21 *Jac.* c. 19. S. 13. *Stone* 125. See *Stone* 12. *Billingsh.* 116. & *Good.* 88. 2 *Vern.* 97. whether the Commissioners may, by the Equity of the Statute, appoint one to enter for a Condition broken.

(u) *Stone* 125. *Billingsh.* 148. 149. *Good.* 89. See *Nels. Ch. Rep.* 102. *Ch. Caf.* 17. 2 *Vern.* 97. 286. pl. 274.

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tion upon mortgaged Estates shall be at the Disposal of the Commissioners; for they shall have Power to redeem the same, as the Bankrupt himself might have done, and after Redemption to sell them.

A Merchant makes a Feoffment in Fee upon Condition, upon Payment of Money to re-enter, he becomes Bankrupt, the Commissioners may tender (*w*) the Money at the Day, and sell the Land.

2. What real Estate the Commissioners cannot sell.

The Commissioners cannot (*x*) sell Lands, &c. assured by the Bankrupt before he became Bankrupt, so as such Assurance was made *bonâ Fide*, and the Party to whose Use made; was not privy or consenting to the Purpose of the Bankrupt, to deceive his Creditors, at or before such Assurance; nor (*y*) Lands which the Bankrupt had sold by Deed indented, though the Inrolment was after the Bankruptcy; nor Lands, whereof an Extent (*z*) was served, before

(*w*) *Stone* 125. *Bellingh.* 148. 149. *Good.* 89.

(*x*) Stat. 13 El. c. 7. S. 12. *Mo.* 594. pl. 805. *March.* 34. pl. 67. *Billingh.* 113.

(*y*) *W. Jo.* 203.

(*z*) Stat. 21 Jac. c. 19. S. 9. Nor Lands whereon a Statute has been extended, though the *Liberate* was not sued before his Bankruptcy. *Cro. Car.* 149. *W. Jo.* 203.

the Party became Bankrupt; nor Lands purchased or conveyed by the Bankrupt upon the Marriage (*a*) of any of his Children, both Parties being of Years of Consent; so, if Land be settled in Trust for the Wife of *B.* by the Ancestor of such Wife, and *B.* becomes Bankrupt, the Assignee shall have no (*b*) Benefit of such Trust, during the joint Lives of *B.* and his Wife; so, if the Father of *B.* covenant upon his Marriage to pay 15*l.* a Year to *B.* during the Life of the Father, and *B.* becomes Bankrupt, the Assignees shall not (*c*) have the Benefit of such Agreement; neither can they sell the (*d*) Barony of a Peer; nor Lands (*e*) devised to the Bankrupt's Wife; nor a Settlement (*f*) made by a Bankrupt, when he was not a Trader.

No (*g*) Purchaser for valuable Consideration shall be impeached, unless the Commission was sued out within five Years after he became Bankrupt; so, if the Bankrupt be afterwards outlawed, and *A.* gives Money for a Lease of his Land from the King,

(*a*) Stat. 1 Jac. c. 15. S. 5.

(*b*) 2 Vern. 96. pl. 89.

(*c*) 2 Vern. 194. pl. 176.

(*d*) Stone 125.

(*e*) Eq. Cas. Abr. 54. pl. 6. 7 Vin. Abr. 95. pl. 43.
2 Vern. 96. pl. 89. 2 Wil. Rep. 316. pl. 91. 319.

(*f*) 3 Wil. Rep. 298. pl. 75.

(*g*) Stat. 21 Jac. c. 19. S. 14. Keb. Rep. 722. pl. 54.

before

before the Commission sued, he will be a Purchaser (*b*) *bonâ Fide* for so much.

3. In what Manner the Sale shall be.

The Commissioners shall cause all the Bankrupt's Lands, Tenements, Hereditaments, Fees, Annuities, and Offices to be (*i*) searched, viewed (*k*), and appraised to their full Value, and sell the same by Deed (*l*) indented and (*m*) inrolled, in one of her Majesty's Courts of Record, or (*n*) divide the Lands, &c. proportionably among the Creditors.

Lord (*o*) *Hardwicke* was of Opinion that Commissioners of Bankruptcy ought not to be so extreamly nice, as to preclude a Person from being a Purchaser, because he happened to have out-stayed the Time set by the Commissioners, and compared it to the Case of Estates sold before Masters for

(*b*) *Salk.* 109. but *quere*, and see *Com. Dig.* 532.

(*i*) *Stat.* 13 *El. c.* 7. *S.* 2.

(*k*) And though there be no View of the Lands by the Commissioners before the Sale, it will be good. *Com. Dig.* 534.

(*l*) *Stat.* 13 *El. c.* 7. *S.* 2. 21 *Jac. c.* 19. *S.* 12.

(*m*) *Stat.* 13 *El. c.* 7. *S.* 2. 21 *Jac. c.* 19. *S.* 12. *Carth.* 178. 2 *Show. Rep.* 156. *Ventr.* 360. *Skin.* 30. pl. 6. *T. Jo.* 196. 197. 12 *Mod.* 3. Lord *Coke* says, the Deed need not be inrolled, because the Act says, by Deed indented and inrolled, or *otherwise*. 2 *Rep.* 25. 26.

(*n*) *Stat.* 13 *El. c.* 7. *S.* 2.

(*o*) *Atk. Rep.* 202. 203.

Payment

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Payment of Creditors, and that the Advertisements in Cases of Sales before Commissioners of Bankrupts should not be general for a Meeting in order to sell a Bankrupt's Estate, but should name the Hour as Masters (p) do; and that after the Time expired, if the Commissioners were not gone, that they ought to admit a better Bidder, in order to give the Creditors as great a Satisfaction for their Loss as possible.

2. As to the Bankrupt's personal Estate.

This seems reducible likewise to the same Subdivisions to which we reduced our Considerations on the Bankrupt's real Estate, viz.

1. *What the Commissioners may sell.*
2. *What they cannot: and*
3. *In what Manner the Sale shall be.*

(p) Who always advertise the Estate to be sold at a definite Time, as between the Hours of ten and twelve, that they may not be under the Necessity of staying beyond that Time; but if a Person comes to bid, even after that Time, before the Master is gone, he is admitted notwithstanding. *Atk. Rep. 202. 203.*

1. What

1. What personal Estate the Commissioners may sell.

The Commissioners may (*q*) sell all (*r*) Money, Goods, Chattels, Merchandizes, Wares, and (*s*) Debts of a Bankrupt wherever found; they are empowered to assign or dispose all the (*t*) Debts due to and for the Benefit of the Bankrupt, to the Use of the Creditors, and the same Disposition of the Debts shall vest the Property in the Person to whom assigned by the

(*q*) Stat. 13 El. c. 7. S. 2. and Goods, &c. which come to the Bankrupt after Distribution, are subject to a new Sale and Distribution, according to *Billingsb.* 118. but *Stone* 132. expressly says they are *not*.

(*r*) Though the Bankrupt pay his Money to any Creditor for a just Debt. 2 Rep. 25. *b.* 26. *a. contra* by Stat. 1 Jac. c. 15. S. 14. See fol. 95. They may sell Monies due to a Bankrupt upon a Judgment. *W. Jo.* 215. pl. 4.

(*s*) Though transferred into other Mens Names, in as ample Manner as if the Bankrupt had been actually possessed thereof, except the same were transferred upon the Marriage of his Children, (both the Parties married being of Years of Consent) or some other valuable Consideration. Stat. 1 Jac. c. 15. S. 5. And also Debts due to the Bankrupt's Wife, though unrecovered. *Wil. Rep.* 249. 10 Mod. 160. 243. *Gibb.* Caf. 318.

(*t*) Lord *Hardwicke* was of Opinion, that the Debts here mentioned meant Debts due at the Time of the Bankruptcy, or when the Commission issued, which was the same, for it was *then* only that the Creditors were to have a Portion Rate like. *Atk. Rep.* 78.

Commissioners,

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Commissioners, as fully as if the Bond, Judgment, or Contract, whereupon the Debt shall arise, had been made to the Person to whom the same shall be so assigned, so that the Bankrupt shall not afterwards recover, release, or discharge the same, nor shall it be attached as a Debt of the (u) Bankrupt; they may assign on (w) Obligation taken in another's Name to the Bankrupt's Use.

The Commissioners may sell all the (x) Goods of the Bankrupt, though he sold them *bonâ Fide* after his Bankruptcy, and before the Commission awarded; so, if he made a (y) Gift to a Creditor of them; or had sold (z) them in *Market (a) overt*; a (b) *fortecori*, Goods sold by the Bankrupt after the Commission, before Seizure; they may sell his Goods in (c) *Ireland*; his

(u) Stat. 1 Jac. c. 15. S. 13. The Preamble observes, "that the Power and Authority given to Commissioners touching Debts due to Bankrupts was not so full and perfect, as that the full Benefit thereof, in due Course, could be employed to the Use of the Creditors as intended."

(w) *Noy's Rep.* 142. *Palm.* 505.

(x) *Com. Dig.* 531.

(y) *Com. Dig.* 525.

(z) For the Sale is avoided by Relation. 2 *Keb. Rep.* 33.

(a) By *Twisden.* Lev. Rep. 174. *Sid.* 272. 2 *Keb. Rep.* 33.

(b) *Mo.* 594. pl. 805.

(c) *Billingsh.* 123. *Good.* 114. *Com. Dig.* 531.

Goods

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Goods (*d*) forfeited, and seized by a *Capias utlegatum* after the Bankruptcy, and before the Commission, for a Bankrupt shall not defeat his Creditors, by his Act, or (*e*) Default; so the Goods of a Bankrupt (*f*) Felon shall go among the Creditors; they may sell an Heriot (*g*) Relief, &c. due to the Bankrupt; a Legacy (*h*) given him, for which he had a Decree; so they may his Share of the Partnership Trade (*i*) mortgaged to a Partner; his Pay (*k*) as an Officer in the Army.

They may sell all (*l*) Goods whereof the Bankrupt shall be reputed (*m*) Owner, and

(*d*) *Salk.* 109.

(*e*) L. C. Baron *Comyns* says, that it was resolved otherwise in the *Exchequer*. *Hil.* 6 *Geo. Com. Dig.* 532.

(*f*) *Stat.* 5 *Geo.* 2. c. 30. S. 1.

(*g*) *Com. Dig.* 532.

(*h*) 2 *Vern.* 432, 433. or which was left him after his *Certificate* signed by Number and Value of Creditors, and the Commissioners; but before it was confirmed and allowed by the Great Seal. 2 *Bur. Rep.* 719.

(*i*) Unless it was delivered at the Time of the Mortgage, because otherwise it is a delusive Credit, and falls within *Stat.* 21 *Jac.* c. 19. S. 11. *Atk. Rep.* 183.

(*k*) *Atk. Rep.* 214.

(*l*) Lord *Hardwicke* said, that the Provisions in S. 11. of this Statute, with Respect to legal Interests, must be followed as to equitable ones; that *Choses in Action* therefore were within the Meaning of the Act, and included in the Words *Goods*, &c. *Atk. Rep.* 184.

(*m*) *Stat.* 21 *Jac.* c. 19. S. 11. Counsel said, that continuing in Possession was always looked upon as

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with

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with the Consent of the true Owner, shall take upon him the Sale and Disposition, though formerly conveyed (*n*) by the Bankrupt to such true Owner for valuable Consideration; and all Goods extended (*o*) after his becoming Bankrupt, on Pretence of his being Accountant, or indebted to the King, if upon Examination of the Commissioners on Oath it be found, such Debt be due to such Accomptant, or Debtor on a Contract not originally made between him and the Bankrupt, but made with or in Trust for some other Person; so, Goods taken in (*p*) Execution after an Act of

Evidence of Fraud, that this Law was only *declarative* of what was the Law before. *Bur. Rep.* 474.

(*n*) Lord *Hardwicke* said, that this Statute extended to conditional as well as absolute Sales. *Atk. Rep.* 183.

(*o*) Stat. 21 Jac. c. 19. S. 10.

(*p*) *As it seemeth. Lev.* 173. *resolved. Bur. Rep.* 34. 37. Lord *Raym.* 725. *Bur. Rep.* 36. *Freem.* 397. pl. 516. (*b.*) *Keb. Rep.* 930. pl. 36. 2 *Keb. Rep.* 34. 3 *Keb. Rep.* 480. pl. 17. 3 *Lev. Rep.* 69. 191. Execution executed, cannot be defeated by a Commission of Bankruptcy. 3 *Mod.* 236. *Comb.* 121. *Show. Rep.* 146. 2 *Ventr.* 169. 170. *but this not Law.* Yet if the Goods of a Bankrupt are seized in Execution after the Bankruptcy, and sold by the Sheriff, the Commissioners cannot assign the Money raised by the Sale, but they must assign the Goods themselves, 3 *Lev. Rep.* 192. So if Goods are taken in Execution by the Sheriff at the Suit of the Bankrupt, they cannot be assigned till they come to the Hands of the Bankrupt. *W. Jo.* 215. pl. 4. *Cro. Car.* 166. pl. 12. 176. Bankruptcy,

Bankruptcy, though the Writ bears *Teste* before; so a Judgment (*q*) obtained by a Creditor after an Act of Bankruptcy shall be avoided; so if the Bankrupt had granted or pledged his Goods for Payment of Money, the Commissioners may pay or tender the Money, and then (*r*) sell the Goods.

2. What personal Estate the Commissioners cannot sell.

The Commissioners cannot (*s*) sell (*t*) Stock which the Bankrupt had as Trustee only, for Payment of the Debts of another; nor (*u*) Goods originally the Plaintiff's, and which the Bankrupt had no more than a bare Authority to sell for the Plaintiff's Use; nor Effects which the Bankrupt had as (*w*) Executor, or (*x*) Factor; nor Goods

4. pl. 24. Nor Damages which the Bankrupt may recover for Trespass or Slander, before they are ascertained by Judgment. *W. Jo.* 215. pl. 4. *Cro. Car.* 166. 167.

(*q*) *Com. Dig.* 532. 12 *Mod.* 446.

(*r*) *Stat.* 21 *Jac. c.* 19. § 13.

(*s*) *Com. Dig.* 533. *Wil. Rep.* 314. pl. 81. *id.* 321.

(*t*) Lord Parker said, that it would lessen the Credit of the Nation to make *trust* Stock liable to Bankruptcy. 3 *Wil. Rep.* 187. Note [A.]

(*u*) *Wil. Rep.* 318.

(*w*) *Comb.* 185. *Show. Rep.* 294. 10 *Mod.* 161. 245. *Gilb. Cas.* 323. 11 *Mod.* 139. *Wil. Rep.* 256. 319. See fol. 21.

(*x*) *Wil. Rep.* 319. 7 *Vin. Abr.* 89. pl. 5. in Notes. 3 *Wil. Rep.* 185. pl. 44.

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delivered (y) antecedent to an Act of Bankruptcy, though accepted subsequent; nor Goods whereof an Execution was (z) executed, before he became Bankrupt; nor Goods taken (a) in Execution for the Bankrupt, before the Return of the Writ; so, if an Execution be made after an Act of Bankruptcy, and before (b) Notice of it, upon a Writ *tested* before the Bankruptcy, *Trover* does not lie by the Assignees against the Officer; if a Lessee for Years has a Covenant for Renewal, the Assignee shall have no (c) Benefit of it; nor of a (d) Legacy left the Bankrupt's Wife, nor of a Bond (e) on Marriage to leave her a Sum of Money.

They cannot sell Goods purchased or conveyed by the Bankrupt upon the (f) Marriage of any of his Children, both

(y) 10 Mod. 432. *Sira.* 165. *Fortesc.* Rep. 353.

(z) Stat. 21 Jac. c. 19. S. 9.

(a) *Cro. Car.* 166. pl. 12. 176. pl. 24. *W. Jo.* 215. pl. 4. Yet Goods not taken in Execution may be sold, though the Writ of Execution was delivered to the Sheriff before his Bankruptcy. 3 *Lev. Rep.* 70. 192.

(b) *Lev. Rep.* 173. *Sid.* 271. pl. 27.

(c) 2 *Vern.* 97. Ch. Caf. 17. 18.

(d) Ch. Pr. 121.

(e) 2 *Vern.* 662. pl. 587. 2 *Wil. Rep.* 298. otherwise of such a contingent Bond. 2 *Wil. Rep.* 497.

(f) Nor Debts in such Case, or for some other valuable Consideration transferred into other Men's Names. Stat. 1 Jac. c. 15. S. 5.

Parties

Parties being of Years of Consent; they cannot assign Debts (g) paid by a Debtor to the Bankrupt, truly and *bonâ Fide*, before he understood him to be Bankrupt; nor Debts due to him as * Executor, but it is for this particular Reason, because they are appropriated to pay the Testator's Debts; and if they were assigned, it would be a Wrong, viz. a *Devastavit*; nor Goods (h) bought of a Bankrupt *bonâ Fide* for valuable Consideration, before Notice of the Bankruptcy; nor Goods delivered by a Bankrupt pursuant to an (i) Award confirmed in *Chancery* without Fraud, before Notice that he was Bankrupt; nor Goods consigned (k) to the Bankrupt but not paid for, which the Owner before Delivery, hearing that he was Bankrupt, and changing his former Consignment, consigns to another; nor Goods *bonâ Fide* (l) sold to the Bankrupt in the usual Course of Trade, before Notice that he was become Bankrupt; nor a Bond, &c. assigned (m) by the

(g) Stat. 1 Jac. c. 15. S. 14. 3 *Keb. Rep.* 190. pl. 38. see fol. 95. Note (r).

* *Wil. Rep.* 254. 10 *Mod.* 162. 163. 245. *Gilb. Cas.* 323.

(h) So it seemeth. *Skin.* 149. pl. 21.

(i) *Quere* 2 *Vern.* 230.

(k) *Contra* at Law, but so resolved in Equity. 2 *Vern.* 203. pl. 187. *Atk. Rep.* 248. 249.

(l) Stat. 19 Geo. 2. c. 32. S. 1.

(m) 2 *Vern.* 428. pl. 390.

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Bankrupt for a just Debt, before his Bankruptcy; so they cannot assign Money given by the Bankrupt *after* (n) an Act of *Bankruptcy* committed, to put his Son Apprentice, being the usual Rate, and given several Years before he appeared to be Bankrupt; nor (o) Money recovered against a Bankrupt, before Notice; nor Money which before the suing forth of the Commission, was *bonâ Fide*; and in the usual Course of Trade (p) received of the Bankrupt, before the Person receiving had Notice that he was become Bankrupt; nor Debts or Goods assigned by him, *before* he became Bankrupt, to his Security on his being appointed Receiver of the Court of (q) *Chancery*.

3. In what Manner the Sale shall be.

The (r) Assignment may be made to the Creditors who come in, of all the Goods of the Bankrupt, for Satisfaction of their respective Debts rateably; or to any in Trust, and for the equal Benefit of all the Creditors; and if all the Creditors have

(n) *Resolved* in 3 *Lew. Rep.* 58. 59. *doubted* in *Skin.* 21. pl. 21.

(o) 3 *Keb. Rep.* 231. 232.

(p) *Stat.* 19 *Geo. 2. c.* 32. *S. 1.*

(q) *Bur. Rep.* 472.

(r) *Com. Dig.* 535.

a joint

a joint Debt, the Goods may be assigned to them (s) generally.

The Commissioners shall cause the Bankrupt's Goods, &c. to be (t) searched, (u) viewed, and appraised to the best Value; or otherwise to order the same for Satisfaction, and Payment of Creditors; and they shall grant and assign, or otherwise dispose all (w) Debts due to the Bankrupt.

The Commissioners shall assign the Bankrupt's Estate and Effects unto the (x) Assignees (y) chosen by the (z) Creditors.

(s) But a general Assignment of the Goods to the Creditors, who have several and different Debts, is not good. 2 Rep. 26. b.

(t) Stat. 13 El. c. 7. S. 2.

(u) Though there be no View of the Goods by the Commissioners before the Sale, it will be good. 2 Rep. 26. a.

(w) Stat. 1 Jac. c. 15. S. 13. the Assignment is good, though the Debt assigned is more than was due. T. Raym. 7.

(x) The Assignees shall keep distinct Books of Account, wherein they shall duly enter all Money or other Effects which they shall have got in or received out of the Bankrupt's Estate, to which Books every Creditor shall, at all reasonable Times, have free Resort, and inspect the same as often as they shall think fit. Stat. 5 Geo. 2. c. 30. S. 26.

(y) Stat. 5 Geo. 2. c. 30. S. 26. Dr. Blackstone seems much mistaken about the Choice of Assignees. See 2 Black. Com. 480. 481: Lord Hardwicke said, that when Assignees were chosen under a first Commission, all the Estate and Effects of the Bankrupt were vested in them, and he was incapable of carrying-

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Lord Chancellor (*a*) *Hardwicke* recommended it to the Commissioners of Bankrupt, to except Copyholds out of the Deed of Assignment of the Bankrupt's Estate, because it would save the Expence of two Times; for the Commissioners, where the Creditors could meet with a Purchaser of the Copyhold, might convey to him in the first Instance.

Commissioners of Bankrupts having made an Assignment of the Bankrupt's Estate, and the Bankrupt afterwards obtains his Certificate, cannot (*b*) make a subsequent Assignment.

Lord (*c*) *Hardwicke* thought it very proper that the Words "*jointly and severally*" should be inserted in the Assignment, for the Safety and Security of each respective Assignee.

No (*d*) Schedule shall be annexed to any Deed of Assignment of the personal Estate of a Bankrupt from the Commissioners to the Assignees.

on any Trade, and all his future personal Estate was affected by the Assignment, and every new Acquisition would vest in the Assignees. *Atk. Rep.* 253.

(*z*) No Creditor shall be permitted to vote in the Choice of Assignees whose Debt shall not amount to ten Pounds. Stat. 5 Geo. 2. c. 30. S. 27.

(*a*) *Atk. Rep.* 96.

(*b*) *Eq. Cas. Abr.* 54. pl. 7. 2 *Eq. Cas. Abr.* 124. pl. 2. 7 *Vin. Abr.* 88. pl. 12. *Wil. Rep.* 385. 386. *Gilb. Eq. Rep.* 141.

(*c*) *Atk. Rep.* 90.

(*d*) Stat. 5 Geo. 2. c. 30. S. 42.

C H A P.

C H A P. VI.

The Examination and Commitment
of the Bankrupt, and of his Wife,
and others.

THE Commissioners *(e)* may *(f)* examine as well by Word of Mouth as on Interrogatories in Writing every Bankrupt touching all Matters relating to his *(g)* Trade, Dealings *(h)*, Lands *(i)*, Tenements, Goods, Chattels, Effects, Debts, Bills, Bonds, Books of Account, and such other Things as may tend to disclose his Estate, or secret Grants, Conveyances, and eloining of his Lands, Tenements, Goods, Money, and Debts, as the Commissioners shall think meet; and they may also examine in Manner aforesaid every

(e) Stat. 5 Geo. 2. c. 30. S. 16.

(f) In Case any Bankrupt is in Execution at the Time of issuing the Commission, and is willing to submit to be examined, but cannot be brought before the Commissioners, they shall attend the Bankrupt in Custody, and take his Discovery. Stat. 5 Geo. 2. c. 30. S. 6.

(g) Lord Chancellor *Parker* said, that till Stat. 5 Geo. c. 24. [expired] the Commissioners could not examine the Bankrupt himself touching his Bankruptcy. *Wil. Rep.* 611.

(h) Stat. 5 Geo. 2. c. 30. S. 16.

(i) Stat. 1 Jac. c. 15. S. 7.

K 5

Person

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Person duly summoned before, or present at any of their Meetings, touching all Matters relating to the Person, Trade, Dealings, Estate, and Effects of the Bankrupt, and any Act of Bankruptcy committed by him, and * also reduce into Writing the Answers of verbal Examinations of the Bankrupt or other Person, had or taken before them; which Examination so reduced into Writing, the Party examined shall sign and subscribe.

If (k) any Person, being known or suspected to have any Part of the Bankrupt's Lands, Tenements, Hereditaments, Goods, Chattels or Debts, or to be indebted to or for his Benefit, shall (after lawful Warning to the said Person given, to come before the said Commissioners to be examined, according to the Intent of 13 Eliz. c. 7. Sect. 5.) refuse to come, or shall not come before the Commissioners at the Time appointed, having no lawful Impediment (such as shall be admitted and allowed of by the Commissioners, and which shall be then signified, or made known to them at the Time of their Assembly) or that any such Person, having Knowledge or Warning of any other Meeting of the Commissioners, shall not come and appear before them at such Time as he lawfully may

* Stat. 5 Geo. 2. c. 30. S. 16.

(k) Stat. 1 Jac. 15. S. 10.

come,

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come, having no such lawful Impediment, as shall be then made known to them, and by them admitted and allowed of as aforesaid, or being come before them, shall refuse to be sworn, and to make Answer to such Interrogatories as shall be ministered unto him, according to Stat. 13 El. c. 7. they may commit to such Ward and Prison, as to them shall be thought meet, such Person as shall so refuse to be sworn, and make Answer to such Interrogatories to be ministered as aforesaid, and direct their Warrants to such Persons as to them shall be thought meet; to apprehend such Person as shall refuse to appear before them as aforesaid, and to bring him before them to be examined as abovesaid, and upon his Refusal to come before them as aforesaid, they may commit the Parties so refusing, to such Prison as they shall think meet, there to remain without Bail or Mainprize, until such Time as the Person so refusing to come, or to be sworn to answer before the Commissioners, do (l) submit himself to them, (m) and be by them ex-

(l) By Holt Ch. Just. *submit* in this Statute does not mean an Act of humble Submission, but only to make Answer to the Question proposed. Lord Raym. 100.

(m) The Word *and* in this Act L. C. J. Holt said, meant (*id est*) and tied the Submission to that particular Purpose. Lord Raym. 100.

amined according to 13 Eliz. c. 7. and 1 Jac. (n) c. 15.

If any (o) Bankrupt or other Person shall refuse to answer, or shall not fully answer to the Satisfaction of the Commissioners, all lawful Questions put to him by the Commissioners, as well by Word of (p) Mouth, as on (q) Interrogatories in Writing, or shall refuse to sign and subscribe his Examination so reduced into Writing,

(n) Mr. Just. *Foster* said, that the Powers under this Statute continued still in Force, notwithstanding the subsequent Statutes. 2 *Bur. Rep.* 1124.

(o) Stat. 5 Geo. 2. c. 30. S. 16.

(p) Previous to this Statute, a Bankrupt was discharged by the Court of *King's Bench* on his *Habeas Corpus*, from a Commitment of the Commissioners, because they had not exhibited Interrogatories (which are a Term known in the Law, and import that the Questions were put into Writing, 2 *Stra.* 880.) to him, and examined him thereon; and *Holt* held a Bankrupt ought to have a Copy of them, and Time to consider of his Answer. 2 *Stra.* 880. *Barnard.* K. B. 398. Sef. Caf. 333. 334. But Lord *Hardwicke*, even under Statute 5 Geo. 2. refused a Person summoned by the Commissioners in order to be examined touching his Trade and Dealings with the Bankrupt, a Copy of the Interrogatories or Time to prepare himself for his Examination. *Atk. Rep.* 205. pl. 108. Lord *Holt's Reason* that the Interrogatories should be reduced into Writing was, because then it would appear, whether the Questions were proper, and if one of them was improper, he said the Prisoner should be discharged. *Barnard.* K. B. 339.

(q) Stat. 1 Jac. c. 15. S. 8.

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(not having a reasonable (r) Objection, either to the wording thereof or otherwise, to be allowed by the said Commissioners); they may by Warrant under their Hands and Seals commit him to such (s) Prison as they shall think fit, there to remain without Bail or Mainprize, until such Time as he shall (t) submit himself to the Commissioners, and full Answer make to their Satisfaction, to all such Questions as shall be put to him, (which Questions (u) must be (w) specified in the Warrant of Commitment), and (x) until

(r) Lord *Hardwicke* said, if the Bankrupt had an Objection to the Question, he must demur to the Interrogatories, and the Court of *Chancery* would judge of the Question upon Petition. *Atk. Rep.* 200.

(s) Bankrupt or other Person committed by the Commissioners suffered to escape or go out of Prison, until duly discharged, Gaoler to forfeit 500*l.* and 100*l.* more if he refuses to shew such Prisoner to a Creditor who produces a Certificate from the Commissioners (which they are to give *gratis*) of his having proved his Debt under the Commission. See Stat. 5 Geo. 2. c. 30. S. 18. 19.

(t) Lord Ch. Just. *Wilmot* said, the Submission alone was not enough, he must submit to be examined from Time to Time. 2 *Bur. Rep.* 1125.

(u) Stat. 5 Geo. 2. c. 30. S. 17.

(w) Lord *Hardwicke* said, that if the Bankrupt refused to answer any Question, and the Commissioners committed him, and the Delinquent brought an *Habeas Corpus*, the Question must be set forth particularly, that the Judges might judge, whether it was a lawful Question or not. *Atk. Rep.* 200.

(x) Stat. 5 Geo. 2. c. 30. S. 16.

he

he shall sign and subscribe his Examination.

That a Bankrupt notoriously prevaricated seems not a sufficient Cause of Commitment, for every Prevarication is not; and it is not said he prevaricated upon his Examination, relating to the (y) Discovery of his Effects, but only that he prevaricated upon his Examination, which might be in a Matter the Commissioners had no Power to inquire into. Lord *Raymond* said, a Man might prevaricate on his first Examination for half an Hour, yet in the Conclusion he might make a full and ample Answer, and therefore it was not at all proper to send a Man to Prison for such a Piece of Conduct; and that Nothing was more common than such Behavior on Trials at *nisi* (x) *Prisus*.

Perrott being brought up from *Newgate*, by *Habeas Corpus*, appeared upon the Return to have been committed by Commissioners of Bankruptcy to be safely kept and detained without Bail or Mainprize, until such Time as he should submit himself to

(y) The Party to be examined need not pay an universal Obedience to the Commissioners, so as to answer all Questions, but only what he knows of any Person's carrying off any Part of the Bankrupt's Estate, but not by himself. 5 Mod. 309. if done *after* the Bankruptcy, but not if *before*. Comb. 391.

(x) Sef. Caf. 335. 2 *Stra.* 880. *Barnard.* K. B. 399. the

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the Commissioners, and full Answer make to their Satisfaction to the Question put by them to him; which Question was specified in their Warrant to have been put to him by them in Writing, upon the last Day of his Examination, after his having obtained 46 Days beyond the ordinary Time; and to have been propounded to him in these Words, viz. "As you do admit that you have spent the last Week, previous to this your Examination with Mr. *Maynard* (one of your Assignees) to settle and adjust your Accounts, and to draw up a true State thereof, to enable you to close such your Examination; and do likewise admit, that upon such State thereof, it appears that after giving you Credit for all Sums of Money paid by you, and making you Debtor for all Goods sold and delivered to you, from your first entring into Trade to the Time of your Bankruptcy, it appears that there is a Deficiency of 13513*l.* give a true and particular Account what is become of the same, and how and in what Manner you have applied and disposed thereof." To which Question so put by the Commissioners as aforesaid, the said *John Perrott* did wilfully and obstinately refuse to give any other than the following general Answer; (that is to say) "That on Goods sold this last Year, I have lost upwards of 2000*l.* and by Mournings I have lost upwards of 1000*l.* And
that

that for nine or ten Years I have (and I am sorry to say it) been extreamly extravagant, and spent large Sums of Money. *John Perrott.*" Which Answer of the said *John Perrott* not being satisfactory to us the said Commissioners—These are therefore to will, require, and authorize you immediately, upon Receipt hereof, to arrest, &c. and him safely to convey, &c. and to deliver, &c. safely to keep and detain, without Bail or Mainprize, until such Time as he shall submit himself to us the said Commissioners, or to the major Part of the said Commissioners by the said Commission named and authorized, and full Answer make to our or their Satisfaction, to the Question so put to him by us as aforesaid.

Two Reasons were urged on the Part of *Perrott*, why he ought to be discharged from this Imprisonment. 1st. That the Answer which he had already given was a full, sufficient, and satisfactory Answer, and the best and only one that could be given by an idle, extravagant Man, who had never kept any Accounts; and, consequently, that the imprisoning him until he should give a more full and satisfactory Answer to this Question, was an Imprisonment for Life.

The second Reason was, that the Power and Jurisdiction of the Commissioners, to take the Bankrupt's Examination and Disclosure, was temporary and limited, and confined

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to the Time allowed to the Bankrupt to come in and surrender himself and submit to be examined; after which limited Time, the Commissioners had no Power to examine him at all: consequently, they had no jurisdiction to commit him for any longer Time than their own Power to examine him lasted; which did not exceed the Time allowed him to come in and surrender himself and submit to be examined. And his Counsel compared it to a Commitment by the House of Commons; which ended with their Session.

In support of these objections, they relied upon the Construction of the Bankrupt Acts; and particularly of 5 Geo. 2. c. 30. S. 1. 2. 3.

On the other side it was insisted—1. That the Bankrupt's Answer was nugatory and insufficient; and 2dly. That the Power and Jurisdiction of the Commissioners to examine the Bankrupt, and obtain a Disclosure and Discovery of his Estate and Effects, and the Manner in which he had disposed of them, was not limited and confined to the last Minute allowed him for his Surrender and Submission; but might be pursued and proceeded upon at any subsequent Time; and for this they relied on the End and Intention, and genuine Construction of all the Bankrupt Acts, and particularly of 1 Jac. c. 15. S. 7. 8. and 5 Geo. 2. c. 30. S. 16.

Lord

Lord (t) *Mansfield*. If the Question put was improper, or if the Question be proper, and the Answer satisfactory, the Man ought to be discharged; but this is a proper Question, and the Answer is very insufficient and unsatisfactory.

The Construction offered by the Counsel who object to this Commitment, is founded upon mere arbitrary Implication: The Legislature say no such Thing. On the contrary, the 5 Geo. 2. c. 30. S. 16. gives Power to the Commissioners to commit the Bankrupt until he shall submit himself, and full Answer make to their Satisfaction: And Section 17th gives Power to the Court or Judge, to re-commit him to the same Prison, there to remain as aforesaid, until he shall conform as aforesaid.

The Examination is not confined to be within the Time limited for the Bankrupt to come in and surrender, and submit to be examined. The Bankrupt must indeed surrender within the limited Time; and he must submit within the limited Time, to be examined from Time to Time; and he must, upon his Examination, disclose and discover and deliver up his Estate and Effects; but the Act does not require the Examination to be full and perfect and (u)

(t) 2 *Bur. Rep.* 1123.

(u) See Stat. 5 Geo. 2. c. 30. S. 1.

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completed within the limited Time; nor is it proper that it should be so. A Man's Memory may fail him at one Time, and be refreshed at another; or his first answer may be equivocal, or imperfect: And why should he not be called upon to explain and complete it? The Power of the Commissioners is general, and not limited to the Compass of Time given to the Bankrupt to come in.

The last Examination within the limited Time is material indeed to the Bankrupt himself, (because he cannot afterwards contradict himself:) But he may be compelled by the Commissioners to make further Answer, after that Time. The Bankrupt may omit to come in, till the very last Minute of his Time; and if he then surrenders and submits to be examined; this will save his Felony: But it may be absolutely impossible for him to make a full Discovery and Disclosure of his Estate and Effects, or to give full Answers to proper Questions within this Space of Time.

But here, the Commissioners have, within the limited Time, required a further Answer to their Question, and committed him for refusing to give it. This Commitment was legal, at the Time when it was made: And I am clearly satisfied, that he cannot redeem himself from his Imprisonment, but on giving a full Answer

to

to the Question. If he should give a full Answer, and the Commissioners not be satisfied with it, he will then be intitled to his proper Remedy.

The Objection has been strongly argued: But there is no Case to support it. It is a new Invention, and would intirely defeat the End and Intention of the Bankrupt Acts.

The three (*w*) Judges were all equally clear that the Man ought to be remanded.

Mr. Just. *Foster* added, that none of them preclude a further Examination.

Mr. Justice (now L. C. J. C. B.) *Wilmot* also concurred in this; and said, that the Clauses operate together, and are auxiliary to each other; and they certainly give a Power of further Examination. There are vast numbers of Questions that may be asked under the Examination, more than can be under the mere Surrender and Submission; that may require further Time, or even arise afterwards. And he ought not to be discharged till he has fully answered. His present Answer is most clearly deficient.

This Man having since the last Motion, submitted to be re-examined by the Commissioners, upon the former Question; and having been remanded by them, petitioned the Lord (*x*) Keeper to be discharged; an-

(*w*) 2 *Bur. Rep.* 1124.

(*x*) Sir *Robert Henley*, Knight, now Earl of *Northington*, and President of the Council.

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nexing a Copy of his Deposition, giving an Account of the Manner in which he had disposed of 1503*l.* in 16 general Articles, one of which was "Expences attending the Connection I had with the fair Sex 5500*l.*" But the Lord Keeper rejected his Petition.

He afterwards submitted to a further Examination by the Commissioners, who thereupon met, and being still dissatisfied with his Answer, remanded him to *Newgate*; from whence he was, at his own Instance, now brought up again by *Habeas Corpus*. When it appeared, that at this last Meeting, the same Question had been again proposed to him. In Answer to which, he particularized a Woman upon whom he had spent 5000*l.* (from *December* 1758, to *December* in the Year 1759;) and also particularized the Times of sending and giving it to her; but that no other Person was privy to this; and that the Woman (whose Name was *Sarah Powell*, otherwise *Taylor*,) is dead, as he has heard. That ~~she~~ he knew him to be a Bankrupt, and never returned the Money or any Part of it to him; and that he gave it to her for her Maintenance and Expences, and not for a Fund for her future Support, or wherefrom he could draw any Advantage. That he knew, in the Year 1759, when he gave and remitted these Sums to her,
" That

"That he was not worth any Thing, and that he was remitting to her the Money of his Creditors." That he was acquainted with her five or six Years; but he cannot recollect what he gave her or spent upon her, during the second, third, or fourth Years of their Acquaintance; nor did he keep any particular Account or Memorandum thereof, either in those Years or in the Year 1759; but speaks from Memory only. That he did not take any of this Money from his Banker; but always took it from Mr. *Tbompson*, (since deceased) who used to sell Goods for him. That all Letters between him (the Bankrupt) and this Woman, (except one or two,) are burnt or destroyed.

Mr. *Gould*, Mr. Serjeant *Davy*, Mr. *Coxe*, and Mr. *Stowe*, argued that he ought now to be discharged, as having given a full and complete Answer to the Questions propounded to him: And it is not material, in the present Respect, whether it be true or false; or whether his Conduct was prudent or imprudent. If he be not now discharged, he must be imprisoned for Life.

Mr. Serjeant (*w*) *Hewitt*, and Mr. *Norton*, *contrâ*, insisted, that this Answer was still incomplete and unsatisfactory; and that *Perrott* could not be indicted for Perjury

(*w*) One of the present Judges of the *King's Bench*.
upon

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upon it. He was bound down by what was already proved upon him and traced to him, to account for a very great Sum of Money which appeared to have come to his Hands in this particular Year: And this is by no means a satisfactory Account of the Disposition of it, nor at all probable in itself. He lets the Commissioners into no Sort of Light whereby to trace this Money, or to discover what is become of it: It is not to be imagined or conceived that 4. 5. 6. or 7. hundred Pounds in a Month could be paid her for Maintenance and Expences only; especially as it appears (as it does by what he himself has represented in one Part of his Examination) that she had only a Man Servant and two Maids, whilst she was at *Bath*. It might have been repaid to him or to some one in Trust for him; or laid out in Stocks, and those Stocks transferred in Trust for him.

The Court (x) held his Answer to be incomplete and unsatisfactory; and ordered him to be remanded.

Perrot's Warrant of Commitment occasioned the Publication of a *quarto* Pamphlet, intituled "An authentic Narrative of the Proceedings under a Com-

(x) 2 *Bur. Rep.* 1216.

mission of Bankruptcy against *John Perrott* late of *Ludgate Hill* (c) *Laceman*, who was executed (d) in *Smithfield* on *Wednesday November 11, 1761.* for concealing his Effects."

A Copy of *Perrott's* Warrant of Commitment is added by Way of Appendix to this Pamphlet, for this Reason, viz, "many Difficulties having arisen with Respect to the Commitment of Bankrupts, it was desired by several Gentlemen of the Law," which Warrant (continues the Compiler of the Pamphlet) may be considered as an *authoritative Precedent*, it having, after a solemn Discussion of it's Merits and Validity, received the Approbation of the Right Honourable Lord *Mansfield*, Lord Chief Justice, and the (e) rest of the Judges of the Court of *King's Bench*, who unanimously

(c) It is observable, that *Perrott*, in the Warrant of Commitment, is called "a *Merebant*," the Witness on his Trial proved him a "Linen Draper," and here he is declared "a *Laceman*;" this does not seem agreeable to the *legal Precision* required in *criminal Proceedings*. The Bankrupt's Description in the Commission is the essential one.

(d) 2 *Bur. Rep.* 1216. on a Gallows erected there for that Purpose. *Town*, a Tallow-Chandler, was executed for concealing his Effects, in the Year 1712. and *Thompson*, an Embroiderer, for not surrendering in the Year 1756; and though his Time had not been enlarged.

(e) Viz. Mr. *J. Denison*, Mr. *J. Foster*, and Mr. *J.* (now L. C. J. of C. B.) *Wilmot*.

declared

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declared it right and good in Form and Substance.

The Warrant recites the Statute of 5 Geo. 2. c. 30. thus;

“ An Act for the better preventing Frauds committed by Bankrupts :”

Whereas the *true Title* of *that* Statute is,

“ An Act to prevent the committing of Frauds by Bankrupts.”

We very well know that it has been determined (*f*) that as the *Title* of an Act of Parliament is no Part of the Act, the *Misrecital* of it is *not fatal*; but in a later (*g*) Case it was held, and by *Holt* Ch. Just. too, that the *Misrecital* of the *Title* of a Statute did *vitate*; and we have this great Man's Reason for his Opinion, viz. It is very true (says he) that the *Title* of an Act of Parliament is no more a Part of the Law, than the *Title* of a Book is Part

(*f*) *Lord Raym.* 77. This Case, which was in the Court of C. B. appears to have been determined upon the Authority of one in which *Hale* Ch. Baron had determined the same Way. See *Hard.* 324. pl. 4. *Holt* Ch. J. declared the Saying of *Hale*, if at all, was sudden; and, notwithstanding his great Veneration for him, he could not agree with him. 6 Mod. 63.

(*g*) 6 Mod. 62.

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of the Book; and there is, for *that Reason*, no Necessity to set it out; but where a Party does set this out *specially*, he thereby ties himself up to an Act *so intituled*, and if he cannot produce such an one, he is gone; Gould J. agreed with Holt; Powel J. gave no Opinion, but said that he concurred with the other Judges of the *Common Pleas*, solely upon the Authority of the Opinion of Hale as reported in *Hardres*.

We are aware too, that had the Bankrupt shewn the Variance to the Court in a proper Manner, the Court (*b*) must have remanded him by their Rule to the same Prison, there to remain until he fully answered to the Satisfaction of the Commissioners.

We make the Observation, because we think it extremely remarkable, that a Warrant which had been settled and approved by some of the ablest of the Profession, should be liable to so palpable an Objection; and besides, we could not but admire, that as the Commitment had been so much canvassed and litigated in *Westminster Hall*, the Objection should have escaped the Notice, not only of Master *Burrow*, but also of the Compiler of the authentic Narrative, professedly wrote on the very Subject, and declared to include every

(*b*) By Stat. 5 Geo. 2. c. 30. S. 18.

Transaction from the awarding the Commission, to the Time of the Bankrupt's Condemnation.

As we have mentioned the Trial, Condemnation and Execution of *Perrott*, we cannot help observing, that the petitioning Creditor appeared to be one of the principal Witnesses on that Prosecution; we observe it, because it is (i) held, that the Creditor of a Bankrupt cannot be a Witness, for he swears to (k) increase his own Dividend; besides, the Compiler of the authentic Narrative informs (l) us, that "the Bankrupt had the Hardiness to bring an Action in the Court of *Common Pleas*, against the Commissioners, for false Imprisonment; which Action the (m) Assignees were by the (m) Creditors authorized to defend;" so that the petitioning Creditor seems to have been interested both as a Gainer and Loser; and his Testimony ought not to have been admitted, if he was either, and whether the Advantage

(i) 2 *Keb. Rep.* 348. pl. 31. *Stra.* 507. 12 *Vin. Abr.* 11. pl. 28.

(k) *Stra.* 507. And this Matter of Interest seems to be the Reason why Bail cannot be Evidence for the Defendant without Consent. *Keb. Rep.* 296. pl. 131. *Style* 385. 3 *St. Tri.* 253. 2 *Hawk. P. C.* Ch. 46. pl. 24.

(l) 36. First Part.

(m) The petitioning Creditor was one of them.

were direct and immediate, or consequential (n) only.

Lord (o) Coke says, *misera est Servitus, ubi Jus est vagum aut incertum*; and yet we find Diversity of Opinions in Regard to the Admission of an interested Witness on a criminal Proceeding; for Holt Ch. Just. (p) said, he was not satisfied, that a Person *interested* could be *Evidence* in a *criminal Matter*; but Treby Ch. Just. C. B. before whom a second Trial was had (q) said, that though he paid Deference to the Judgment of B. R. yet his Opinion was, that the *Evidence* was *good, though interested*, and this as well on an *Indictment* as in an *Action*, and that the *Party* who was to get by the *Conviction* might be *Evidence against* the Criminal.

It is further observable on this Trial, that the petitioning Creditor was the Person to whom (according to his own Deposition on the Trial) the Bankrupt was *denied* by Agreement, which we believe was the first and only Act of Bankruptcy committed by, or at least proved against *Perrott*; here too, (we are sorry to say it) we again meet with Contrariety of Opi-

(n) Co. Lit. 6. b. Sid. 237. pl. 4.

(o) 4 Inst. 246.

(p) Comb. 360.

(q) 12 Vin. Abr. 23. pl. 24. in Marg.

nions,

nions, for the late Lord Ch. Just. *Lee* (r) held, that where the Denial was by Agreement in order to take out a Commission, such Denial was *no* Act of Bankruptcy; but the late Mr. Just. *Foster* (s) held, that the Bankrupt's being denied to the Plaintiff's Clerk, who was sent to demand Money, in Consequence of an Agreement made, at a Meeting of the Creditors two Hours before, (at which Meeting the Bankrupt and the Plaintiff were both present) was a *sufficient Proof* of an Act of Bankruptcy.

In (t) Case the Bankrupt shall neglect or refuse to attend the Assignees in order to make up or settle any Account between him and any Debtor to or Creditor of his Estate, or to attend any Court of Record, in order to be examined (u) touching the same, or for such other Business as the

(r) *Field v. Bellamy.* Hil. 15 Geo. 2. B. R.

(s) *Bromley v. Mundee.* at Guildhall. 2 June 1756? B. R.

(t) Stat. 5 Geo. 2. c. 30. S. 36.

(u) A Bankrupt, who has assigned and released all his Estate and Right to the Assignees, may be examined as a Witness for them. 2 *Vern.* 637. pl. 565. 2 *Bac. Abr.* 290. 12 *Vin. Abr.* 27. (L.) pl. 2. *Eq. Caf. Abr.* 224. pl. 3. The Court of *Common Pleas* said, that a Bankrupt, after he had obtained his Certificate, might be a Witness. 2 *Barnes's Notes C. P.* 253. but his having his Certificate alone will not do, because if there should be more than sufficient to pay his Creditors, he will be entitled to the Overplus, and consequently be swearing for himself.

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Assignees shall judge necessary for getting in his Estate and Effects for the Benefit of his Creditors, or on such (a) Attendance shall refuse to assist in such Discovery, without good Cause to be shewn to the Commissioners, for his Neglect and Refusal, to be allowed by them as sufficient, such Assignees making due Proof thereof upon Oath, or solemn Affirmation before the Commissioners, they are to issue a Warrant directed to such Person as they shall think proper for apprehending the Bankrupt and him to commit to the County Goal, there to remain without Bail or Mainprize, until he shall duly conform to the Satisfaction of the Commissioners, and be by them or the special Order of the Great Seal or otherwise by due Course of Law discharged; and the Goaler of the Prison to which the Bankrupt shall be committed is to keep him in close Custody within the Walls of the Prison until he shall be duly discharged as aforesaid, under the Pains and Penalties before (b) mentioned for such Goaler suffering such Prisoners committed pursuant to this Act, to escape and go at large.

(a) For which Attendance the Bankrupt is to be paid 2s 6d a Day, by the Assignees, out of his Estate. Stat. 5 Geo. 2. c. 30. S. 36.

(b) See Stat. 5 Geo. 2. c. 30. S. 18. 19.

It

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It seems that the Commissioners can never exercise this Power, because the Act itself does not invest them with it till *after* the Bankrupt has *obtained* his *Certificate*; and by the following Case, Lord *Hardwicke* inclined to be of Opinion that a Bankrupt was not obliged to attend his Assignees, after the Expiration of the *forty-two* Days, or at most after such further Time as should be allowed the Bankrupt for finishing his Examination: before the End of which Time it is impossible for the Bankrupt to obtain his Certificate.

The Assignee under a Commission of Bankrupt gave Notice in Writing to the Bankrupt to attend him, in order to explain several Matters relating to his Estate after the forty-two Days were expired, (during which Time he is to be free (c) from all Arrests, Restraints, or Imprisonment) and *before* the *Certificate* was *signed*.

The Bankrupt would not attend upon any other Terms than signing his Certificate, and the Application to the Court was founded upon this, that the Bankrupt had refused to attend, contrary to the (d) Act of Parliament. Lord Chancellor (e) *Hardwicke* said that notwithstanding Stat. 5. Geo. 2. had these general Words, that

(c) Stat. 5 Geo. 2. c. 30. S. 5.

(d) Stat. 5 Geo. 2. c. 30. S. 4.

(e) *Ask. Rep.* 148. pl. 88.

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" every Bankrupt not in Prison or Custody, shall, *at all Times* after his Surrender be at Liberty, and shall attend the Assignees upon every reasonable Notice in Writing for that Purpose, by them given unto him, or left for him, at his House or Place of Abode, in order to assist, and shall assist the Assignees in making out the Account of his Estate and Effects." Yet that the subsequent (f) Clause that " Every Bankrupt having surrendered, shall at all-seasonable Times before the Expiration of the forty-two Days, or such further Time as shall be allowed to him, to finish his Examination, be at Liberty to inspect his Books, Papers, and Writings, in the Presence of the Assignees, or some Person to be appointed by them for that Purpose, and to take and bring with him for his Assistance, such Persons as he shall think fit, not exceeding two at any one Time, and to make out such Extracts and Copies as he shall think fit, the better to enable him to make a full and true Discovery and Disclosure of his Estate and Effects; and in order thereto the said Bankrupt shall be free from all Arrests, Restraint, or Imprisonment of any *of his* (g) Creditors, in coming to surrender, and

(f) S. 5. of 5 Geo. 2. c. 30.

(g) Lord Hardwicke on another Occasion said, that this Act provided against Arrest by Creditors, and from

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from his actual Surrender to the Commissioners, *for and during the said Forty two Days, or such further Time as shall be allowed to him, for finishing his Examination,*" seemed to confine it to the Forty two Days, or the enlarged Time at most, and therefore the Bankrupt's Protection from Arrests, &c. could extend no further; the Chancellor (*b*) asked the Petitioner's Counsel, if their Client would consent to indemnify the Bankrupt from Arrests, but he refusing to do it, his Lordship proposed that he as Assignee should only undertake for the Creditors who had sought Relief under the Commission, that they would not arrest him, and if so, he would order the Bankrupt to attend, for he said, he should not pay any Regard to the Danger the Bankrupt might run, from his Creditors at large; this Petition at the Request of the Petitioner, was ordered to stand over till the next Day of Petitions, that he might endeavour, in the mean Time, to get the Rest of the Creditors under the Commission, to consent to these Terms; upon the whole, *Lord Chancellor* said, that the Clauses in the Act of Parliament relating to this Matter, were very dark and

that *Bail not being Creditors* till damnified, were therefore not within the Description. *Atk. Rep.* 238. p^l.

130.

(*b*) *Atk. Rep.* 149.

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obscurely

obscurely penned, arising chiefly from the Words "*Forty two Days*" being thrown into the latter Clause.

The (i) Commissioners may examine upon Oath the Wife (k) of the Bankrupt for finding out and (l) Discovery of his Estate, Goods, and Chattels, concealed, kept, or disposed of by his Wife, in her own Person, or by her own Act, or Means, or by any other Person, and she shall incur such Danger and Penalty for not coming before the Commissioners, or for refusing to be sworn and examined, or for not disclosing the Truth upon her Examination, as by former Laws is already made and provided against any other Person in the like Case.

(i) Stat. 21 Jac. c. 19. S. 6.

(k) Before this Statute the Court of *Common Pleas* was moved, to know whether the Wife of a Bankrupt could be examined by the Commissioners upon the Statute of Bankrupt, and they were of Opinion she could not be examined. *Brownl.* 47.

(l) But the Wife cannot be examined against her Husband touching his Bankruptcy, or whether he had committed any Act of Bankruptcy, or as to how or when he became Bankrupt; and if the Commissioners commit her, and though the Warrant of Commitment mentions it to be, as well for refusing to discover the Goods of the Bankrupt, as the Time and Manner of his Bankruptcy, yet the Commitment was held illegal, and the Wife ordered to be discharged. *Wil. Rep.* 610. 611. 12 *Vin. Abr.* 11. pl. 28. S. P.

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The Occasion of making the above Statute, was, because (*m*) some Doubt had been made whether the Commissioners had Power to examine the Wife of the Bankrupt suspected to have or detain his Estate, Goods or Chattels, by Reason whereof she did daily conceal and convey away and cause to be conveyed away much Part of her Husband's Monies, Wares, Goods, Merchandizes, and other Estate, to Persons unknown to any but herself, by Reason whereof much of the Bankrupt's Estate was concealed and detained from the Creditors.

All (*n*) Witnesses who shall be sent for, shall have such Costs (*o*) as the Commissioners shall think fit, to be rateably borne by the Creditors; and if any Person other than the Bankrupt, either by Subornation of others, or by his own Act shall wilfully and corruptly commit wilful Perjury by

(*m*) Preamble to Stat. 21 Jac. c. 19. S. 5.

(*n*) Stat. 1 Jac. c. 15. S. 11.

(*o*) Where Witnesses are brought before the Commissioners in Contempt, or where on their Examination they appear to have embezzled or concealed the Bankrupt's Effects, or been otherwise guilty of any Misconduct in regard to the Bankrupt's Estate, the Commissioners have thought themselves justified in refusing such Witnesses their Costs; we presume this Practice has obtained as founded on the equitable Power given the Commissioners by the Statute, for there is no Direction in it for that Purpose.

his Depositions, to be taken before the Commissioners, the Party so offending, and all Persons that shall unlawfully and corruptly procure any such unlawful, wilful, and corrupt Perjury, shall therefore be indicted in any of the King's Courts of Record, and shall suffer such Pains as are limited by the (p) Statutes concerning Perjury.

The Court of K. B. (q) inclined to be of Opinion that a Witness was not to pay universal Obedience to all Questions asked him by the Commissioners, nor was he to answer to any Thing which tended to accuse (r) himself: and though they may commit a Man for refusing to be examined concerning the Estate of the Bankrupt, yet they are not Judges, and their Proceedings are traversable, because their Power of Imprisonment is only (s) *until*, &c. and it may be examined in an Action, whether they have pursued their Authority or not; for their Act in this Respect is only (t) ministerial, and the Commitment is not

(p) Viz. Stat. 5 El. c. 9. 2 Geo. 2. c. 25. S. 2. perpetuated by 9 Geo. 2. c. 18.

(q) 5 Mod. 309.

(r) L. C. Just. *Holt* said, that he was not bound to answer any Thing criminal, that it was criminal to embezzle any Goods *after* the Bankruptcy, but not *before*. Comb. 391.

(s) Lord *Raym.* 467.

(t) Com. Rep. 80.

intended

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intended as a Punishment, but only as a mesne Proceſs to bring the Party to Juſtice, or to make him do his Duty.

Lord Chancellor (*u*) *Hardwicke*, upon Petition, limited the Examination of the Bankrupt's Mother to her Son's trading only; but refused to reſtrain the Commiſſioners from asking any particular Queſtion relevant to her Son's being a Trader, or any Circumſtances relating thereto.

The Mother was asked by the Commiſſioners, whether her Son was a Trader or not, or had any Concern in the Brewhouſe? ſhe answered negatively. His Lordſhip would not therefore reſtrain the Commiſſioners from inquiring into any Circumſtances which might make him a Trader, as for Inſtance; did your Son aſſign over any Share he had in the brewing Trade to you? for if ſhe answered in the affirmative, that would ſhew he was a Trader before he executed an Aſſignment. His Lordſhip ſaid further, that he would not make any Order that the Mother ſhould be at Liberty to be attended by Counſel upon her Examination, becauſe it might be made a Precedent in other Commiſſions, and he thought an Inconvenience would ariſe if allowed in every Caſe, and therefore only recommended it to the Commiſſioners, in this particular Inſtance, to indulge the Mother with Counſel.

(*u*) *Atk. Rep.* 204. 205.

A Perſon

A Person summoned under a Commission of Bankrupt in order to be examined touching his Trade and Dealings with the Bankrupt, instead of attending the Commissioners petitioned Lord Chancellor *Hardwicke* that he might be examined on (w) Interrogatories, and might have a Copy of them, and a Month's Time to prepare himself for his Examination, and that the Commissioners might be restrained (x) from asking him Questions touching (w) Notes given for Money, or Bank Notes, or Goldsmith's Notes, or Money paid by him for Bank Bills, or his or other Banker's Cash Notes.

The Petition was dismissed upon opening, without hearing the Assignee's Council.

Bracy was examined before Commissioners of Bankrupts, for having taken certain Goods of *A.* who was a Bankrupt, and

(w) The bare exchanging of Notes with a Bankrupt, or giving Money for Bank Notes, cannot affect one as a Trader with that Bankrupt, and consequently the Party cannot be hurt by such Discovery, nor would his Lordship presume that the Commissioners would ask such trifling and immaterial Questions, and therefore would not direct the Examination to be upon Interrogatories. *Atk. Rep.* 206.

(x) The Lord Chancellor would not limit or restrain the Commissioners in their Examinations, for if he did, it would be attended with Expence and Inconvenience from Applications of this Kind. *Atk. Rep.* 205. pl. 108.

Bracey

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Bracy made Depositions. Afterwards the Commissioners of Bankrupts assigned these Goods to the Creditors of *A.* who brought an Action against *Bracy*. And now *Bracy* moved in *B. R.* that he might have a Copy of the Depositions in order to defend himself, upon Allegations that they were in Nature of a public Memorial, and that by Ignorance and Surprize he had subscribed many Things to his Prejudice. But the Motion was (y) denied; and the Court said, that these Depositions were not (z) of a public Nature, but taken by the Commissioners to defend themselves.

Depositions (a) taken by Commissioners upon a Commission of Bankrupt, shall not be given in Evidence on a Trial (b) at Common Law, in which it comes in Question whether he was Bankrupt or not, or to prove any Matter depending upon it, because (c) the other Party could not cross examine the Party sworn; and this is the common Course.

(y) Lord *Raym.* 153. *Lil. Abr.* 286. (D) S. P.

(z) Nor now, unless they be entered of Record in Pursuance of Stat. 5 Geo. 2. c. 30. S. 41.

(a) Deposition of Bankrupt himself before the Commissioners was offered in Evidence, and the Court held it good enough; but this being opposed by Defendant's Counsel, Proof was made *vivâ Voce*, of what the Bankrupt confessed. 2 *Keb. Rep.* 348. pl. 31.

(b) Lord *Raym.* 220.

(c) 21 *Vin. Abr.* 352. pl. 9. 2 *Roll. Abr.* 679. pl. 9.

In

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In *Trover* Defendant was charged with his Confession in a Deposition taken before Commissioners of Bankrupt, and Chief Justice (d) *Raymond* refused to let the Defendant into any *parol* Evidence to explain it.

Notwithstanding the Plaintiff had obtained an Order to read the Proceedings in a Commission of Bankrupt against *T.* as an Exhibit in the Cause, and amongst the Rest the Examination of *M. L.* taken before the Commissioners under the said Commission, yet Lord Chancellor (e) *Hardwicke* refused to let the Examination be read at the Hearing, because it was not proved in the Cause, that there was such an Examination taken before the Commissioners, for the Proceedings in a Commission of Bankrupt against *T.* were as to *M. L.* *Res inter alios acta.*

The Commissioners having once examined a Man cannot examine him again, unless it be upon a new (f) Commission.

(d) 2 *Stra.* 794.

(e) *Atk. Rep.* 203. pl. 106.

(f) 2 *Show. Rep.* 102. pl. 99. but if their Examinations be lost by Fire, &c. *quere* whether there ought in such Case to be a new Commission. 2 *Show. Rep.* 102. pl. 99. by Stat. 5 *Geo. 2.* c. 30. S. 41. the Commission and Proceedings may, on Petition to the Great Seal, be entered of Record, and Copies given in Evidence in Case they happen to be lost.

Lord

6. Ch. 6. Commitment of others. 233

Lord Chancellor (*b*) *Nottingham* seemed to be of Opinion that a Defendant should be put to answer in *Chancery* to the same Matter to which he had been formerly examined by the Commissioners on Oath.

One *Bracey* was committed by Commissioners of Bankrupt for refusing to answer, and they concluded their Warrant *thus*, “*until he conform (i) himself to our Authority, and be thence delivered by due Course of Law;*” and upon the Return of an *Habeas Corpus* he was (*k*) discharged, because this Conclusion was not (*l*) pursuant to the Statutes of Bankrupt.

One committed by the Commissioners for refusing to discover the Bankrupt's Estate discharged, because the Return to the *Habeas Corpus* did not 1. express any *Quorum (m)* in the Commission; 2. be-

(*b*) 2 Chan. Cas. 73.

(*i*) The Court held the Word *conform* instead of the Word *submit* to be well enough, because it was of the same Sense. *Salk.* 348. pl. 3.

(*k*) *Carth.* 153. *Lord Raym.* 100. 5 *Mod.* 309. *Cas.* of Set. & Rem. 236. pl. 278. *Cas. Temp. Holt.* Ch. Just. 94. pl. 3. *Ses. Cas.* 332. 335. *Barnard.* K. B. 399. 2 *Lord Raym.* 851.

(*l*) Which being a special Authority to commit, and in Restraint of Liberty, ought to be construed strictly, and the very Words of the Statutes pursued. 5 *Mod.* 309. *Comb.* 390. 391. *Salk.* 349. 2 *Stra.* 880.

(*m*) 3 *Keb. Rep.* 837. pl. 74.

cause

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cause it was, (n) "*committed* in Custody," instead of "*taken*," which is the usual Form; and 3. because it said "*this is the Cause of the taking or Detention*," which is uncertain, it ought to have been *Detention only*.

(n) For this is as if the Commitment were by the Officer who makes the Return. *Ventr.* 323. 324.

C H A P. VII.

The Bankrupt's Certificate, and herein
of his Discharge.

THE Commissioners are to certify in
 (o) Writing under their Hands and
 Seals to the Great Seal that the Bankrupt
 hath made a full Discovery of his Estate
 and Effects, and in all Things conformed
 himself according to the Directions of
 this (p) Act, and that there doth not ap-
 pear to them any Reason to doubt of the
 Truth of such Discovery, or that the same
 is not a full Discovery of all his Estate
 and Effects; and the Commissioners are
 further to certify that *four* Parts in *five* of
 (q) *Number* and (r) *Value* of the Bank-

(o) Stat. 5 Geo. 2. c. 30. S. 10.

(p) Stat. 5 Geo. 2. c. 30. S. 10.

(q) That is *four* out of *five*: in order to ascertain
 this in a large Number of Creditors, it will be necessary
 to divide the Number by *five*, and to *subtract* the Di-
 vidend from the *given* Number, and the Remainder
 will be the Number of Creditors who must sign the Cer-
 tificate; for Example, suppose the Number one hun-
 dred and fifty.

Number

5, | 150 | 30 Dividend.

30

120 *four* Parts in *five*.

Proof 150

(r) The same Method must be observed to find out the
Value as was for the *Number*; suppose for Instance, the
 rupt's

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rupt's (s) Creditors who have duly proved their Debts before them under the Commission, first (t) signed the Certificate, and testified their Consent to the Allowance and Certificate, and to the Bankrupt's (u) Discharge in Pursuance of this Act: and then the Creditors are to certify on the Debts amount to the Sum of twenty-seven thousand two hundred and forty one Pounds.

Value.

£.

5. | 27241 | 5448 Dividend.

5448

21793 four Parts in five.

Proof 27241

(s) Who must be Creditors for twenty Pounds respectively; and their *signing*, or the Persons by them respectively authorized for that Purpose, must be proved to the Commissioners by *Affidavit*, or *Affirmation in Writing*. Stat. 5 Geo. 2. c. 30. S. 10. The Letter of Attorney of any Creditor residing in foreign Parts attested by a Notary Public in the usual Form, shall be sufficient Evidence of the Power by which any Person thereby authorized shall sign any Bankrupt's Certificate. Stat. 24 Geo. 2. c. 57. S. 10. Mr. Baron *Atkyns* informs us that Lord *Hardwicke* was of Opinion that a Person who had a Debt in his *own* Right, and another Debt as *Executor*, could not sign a Certificate in two distinct Rights, for both are to be considered as his own particular Debt. *Atk. Rep.* 85. But we apprehend this is not Law, and that a Creditor may at this Day sign a Certificate in many of the Capacities mentioned in fol. 117.

(t) By Lord *Hardwicke*. *Atk. Rep.* 74.

(u) By Lord Chanc. *Macclesfield*. 7 *Vin. Abr.* 132. pl. 9.

same

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same Parchment their Consent, at the Foot of which the Commissioners are also further to certify, that the Creditors have consented according to the Terms of the Act.

Lord (w) *Hardwicke* refused to supersede a Commission, though on the Petition of a Bankrupt who had a Deed of Release of all Demands from his Creditors; and this he refused for the Sake of the Bankrupt, because, superseding the Commission (he said) would intirely defeat the Bankrupt's Certificate.

A Man who has a Debt may come in under a Commission and prove his Debt, and afterwards he may bring an Action at Law, and the Court will not absolutely stop him from bringing an Action, but put him to his Election, and even then allow (x) him to assent to or dissent from the (y) Certificate.

Unless a Person proves a Debt or shews a reasonable Ground for a Claim, he is not (z) within the Rule for assenting to or dissenting from a Certificate.

(w) *Atk. Rep.* 145. pl. 84.

(x) Lord *Hardwicke* said, the Reason of the Court for such Order was, to make the Remedy against the Person effectual; for otherwise the Person may, by the Rest of the Creditors, be absolutely discharged from the Remedy which this Creditor has elected to take. *Atk. Rep.* 220. And Lord *Talbot* delivered himself to same Effect. 7 *Vin. Abr.* 134. pl. 20.

(y) *Atk. Rep.* 104. pl. 55. 220. pl. 121.

(z) *Atk. Rep.* 83.

Lord

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Lord (*a*) *Hardwicke* laid it down for a Rule, that where there was a joint and separate Commission, a Creditor under the joint Commission might come in under the separate, and assent or dissent to the Certificate of the Bankrupt under the separate Commission.

After the Certificate is signed by the Creditors and Commissioners, it shall be laid before the Lord Chancellor (*b*) together with the Affidavit or Affirmation of the Creditors signing the same, or the Persons by them respectively authorized so to do, and also the Warrant or Authority to sign, in order for the allowing (*c*) and

(*a*) *Atk. Rep.* 97. pl. 45.

(*b*) *Stat.* 5 *Geo.* 2. c. 30. S. 10.

(*c*) A Certificate allowed in the Life Time of the Bankrupt, though not confirmed by the *Great Seal* till after his Death, is good, for the operative Force of it arises from the Consent of the Creditors, and when confirmed, it has its Effect from the Beginning; by Lord *Hardwicke. Atk. Rep.* 77. 2 *Bur. Rep.* 718. At a Meeting of the Commissioners to review a Bankrupt's Certificate, several new Creditors came in and proved their Debts, but as they did not join in a Petition to set aside the Certificate, as fraudulently obtained, the Court would not delay the Allowance thereof, as it would be a great Hardship on the Bankrupt; by Lord *Hardwicke. Atk. Rep.* 74. 75. Where four Parts in five in Number and Value of the Creditors have signed the Certificate, the Court will not stay it on the Petition of Persons, whose Demands on the Bankrupt's Estate depend upon an Account to be taken, and where they do not swear to a Balance in their Favor. *Atk. Rep.* 81. pl. 30.

confirming

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confirming thereof, which Certificate, upon the Bankrupt's making Oath, or being of the People called *Quakers*, solemnly affirming in Writing, that the same and the Consent of the Creditors thereunto were obtained fairly and without Fraud, may be allowed and confirmed by the Great Seal, or by two (d) Justices of the *King's Bench*, *Common Pleas*, or Barons of the *Exchequer*, to whom the Consideration thereof shall be referred by the Great Seal; and any (e) Creditor of the Bankrupt may be heard if he thinks fit, before the Persons aforesaid against making and confirming the said Certificate: for which Purpose the Great Seal gives Notice in the Gazette, that by Virtue of Stat. 5 Geo. 2. c. 30. the

(d) Formerly the Judges had the Cognizance of Certificates, but being found inconvenient, the Great Seal has taken it to itself. *Atk. Rep.* 87.

(e) Though a Creditor of a Bankrupt under 20*l.* is excluded from Assent or Dissent to the Certificate, yet as he is affected by the Consequence of allowing it, he hath a Right to petition, and shew any Fraud against allowing the same. 7 *Vin. Abr.* 134. pl. 18. Sir *Fletcher Norton* said, that as well Creditors who *have signed*, as those who have *not signed*, may be heard against the Allowance, for the Act says, "any Creditors" may "object to it," and they are not confined by any restrictive Words whatsoever, to Matters of *Fraud* or *Unfairness*; but left quite at large. Lord *Mansfield* said, certainly they are not so confined, either by Law or Practice; and any Creditor whatsoever may object to the Allowance. 2 *Bur. Rep.* 718.

Certificate

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Certificate will be allowed and confirmed as the said Act directs unless Cause be shewn to the contrary within twenty one Days from the said Advertizement.

Certificates (said Lord (f) *Hardwicke*) were Matters of Judgment, and he did not know that a *Mandamus* would lie to compel an Allowance, for it was discretionary in the Commissioners *first*, and afterwards in the Lord Chancellor, and yet that it ought not to be arbitrary, either in the Commissioners or the Chancellor to say, we will, or will not, allow a Certificate, but they ought to be governed entirely by the fair or fraudulent Behavior in the Bankrupt.

Signing the Certificate in less than three Months after the Commission issued, Lord *Hardwicke* (g) thought too precipitate as the Bankrupt was a Trader in *Ireland*, and might be presumed to have large Debts standing out against him there; and it appeared also, upon the Face of his Examination, that the greatest Part of his Books were then in *Ireland*, so that he had not made a full Disclosure or Discovery, so as to intitle him to his Certificate.

Lord *Hardwicke* (h) directed a Certificate to be stayed because it was signed within

(f) *Atk. Rep.* 82.

(g) *Atk. Rep.* 83.

(h) *Atk. Rep.* 84. pl. 32.

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two Months from the issuing the Commission, and disapproved extremely of Commissioners being so precipitate in signing Certificates, and said that such hasty Proceedings inverted the very Intention of the Acts of Parliament, which were made in Favor of Creditors, but were too often abused for the Service of insolvent Persons.

The Certificate being signed upon the same Day with the Bankrupt's last Examination; and two thirds of the Creditors living in *Guernsey*, the Allowance thereof was stayed, for Lord *Hardwicke* (i) said, that the admitting such a Certificate as this, would be turning the Edge of the Law against Creditors in Favor of Bankrupts, which was not to be suffered in a commercial Country.

The Certificate of Bankrupt's conforming, and the Allowance thereof according to the Directions of this (k) Statute, shall be sufficient Evidence of the Trading, (l)

(i) *Atk. Rep.* 86. 87.

(k) *Stat.* 5 *Geo.* 2. c. 30. S. 7.

(l) Previous to this Statute, all the Judges of the *King's Bench* were of Opinion, notwithstanding 5 *Geo.* c. 24. S. 30. [expired] provided that a Bankrupt's Certificate should be given in Evidence, and be a full Discharge of any Action which should be brought by any Creditor of the Bankrupt, that yet it was still necessary to prove an Act of Bankruptcy. *Stra.* 533.

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Bankruptcy, Commission, and other Proceedings precedent to the obtaining thereof; and a Verdict shall thereupon pass for the Defendant, unless the Plaintiff, in such Action, can prove the Certificate was obtained unfairly, or by Fraud, or can make appear any Concealment by the Bankrupt, to the Value of 10*l*. And if a Verdict pass for the Defendant, or the Plaintiff shall become nonsuited, or Judgment be given against the Plaintiff, the Defendant shall recover his full Costs.

All Certificates which have been allowed, or to be allowed, and entered of Record, or a true Copy of every Certificate signed and attested, as herein (*m*) is mentioned, may be given in Evidence in any Court of Record, and without further Proof taken to be a Bar, and Discharge against any Action for any Debt contracted before the issuing of the Commission, unless any Creditor of the Person, who has the Certificate, can prove it was fraudulently obtained.

Every Bond (*n*), Bill, Note, Contract, and Agreement or other Security whatso-

(*m*) Stat. 5 Geo. 2. c. 30. S. 41.

(*n*) A Creditor petitioned the Lord Chancellor *Parker* against the Allowance of the Bankrupt's Certificate, who, in Consideration of the Plaintiff's withdrawing his Petition, gave him a Bond for the whole Debt. The Certificate was afterwards allowed, and

ever

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ever made or given by any Bankrupt, or by any other Person, unto, or to the Use of, or in Trust for any Creditor, or for the Security of the Payment of any Debt or Sum of Money due from the Bankrupt, at the Time of his becoming Bankrupt, or any Part thereof, between such Time and his Discharge, as a Consideration or to persuade him to consent to, or sign any such Allowance or Certificate shall be void (o).

Nothing in Stat. 5 Geo. 2. c. 30. shall grant any Privilege, Benefit or Advantage to any Bankrupt whatever who hath on the Marriage of any of his (p) Children given above 100*l.* unless he shall prove by his Books fairly kept, or otherwise upon his Oath, or being of the People called *Quakers*, upon solemn Affirmation before the Commissioners, that he had at the Time thereof, over and above the Value so given, remaining in Goods, Wares, Merchandizes, ready Money, or other Estate real or personal, sufficient to pay unto every Creditor his full

the Creditor sued the Bond against the Bankrupt, who pleaded the Act of 5 Geo. 2. and that the Bond was obtained in order to procure his Discharge; but Lord Chancellor refused to relieve the Bankrupt, and dismissed his Bill with Costs. *Wil. Rep.* 620. pl. 181.

(o) Stat. 5 Geo. 2. c. 30. S. 11. *Atk. Rep.* 105. 106.

(p) Lord *Hardwicke* said, that as this Clause was a penal one, it ought to be construed strictly, and therefore to be confined to the Children of the Bankrupt, and not to be extended any further. *Atk. Rep.* 86.

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Debt; or who shall have lost in one Day five (q) Pounds or in the whole 100*l.* within 12 Months next proceeding his becoming Bankrupt, in playing at Cards, Dice, Tables, Tennis, Bowls, Billiards, Shovelboard, or by Cock-Fighting, Horse Races, Dog Matches, or Foot Races, or other Pastimes or Games whatsoever, or by bearing a Share in Stakes, Wagers, or Adventures, or by betting on the Sides of those who play, act, ride or run as aforesaid; or who within one Year before he became Bankrupt, shall have lost 100*l.* by Contract for the Purchase, Sale, Refusal, or Delivery of any Stock of any Company or Corporation whatever, or any Parts or Shares of any Government or public Funds or Securities, where any such Contract was not to be performed within one Week from the Time of making the Contract, or where the Stock or other Thing so bought or sold was not actually transferred or delivered in Pursuance of the Contract (r).

In order to prevent the many Abuses committed by Bankrupts, and Persons who,

(q) If the Bankrupt has lost 5*l.* at one Time, and the Fact shall be proved before the Allowance of the Certificate, Lord Chancellor *Cowper* (when a Counsel) was of Opinion the Certificate ought not to be allowed either by the Commissioners of Bankrupt, or by the Great Seal. *Beawes's Lex mercat. redi viv.* 499.

(r) Stat. 5 Geo. 2. c. 30. S. 12.

with

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with their Privity attempt to prove fictitious and pretended Debts under Commissions of Bankrupt, that such Persons may be enabled to sign their Consent to the Certificates for discharging such Bankrupts from their Debts. It is enacted, that where any Person shall fraudulently swear, or being Quakers affirm, before the major Part of the Commissioners named in any Commission of Bankruptcy, or by Affidavit or Affirmation exhibited to them, that a Sum of Money is due to him from any Bankrupt, which shall not be really so due, and shall in respect of such pretended Debt sign his Consent to the Certificate for such Bankrupt's Discharge from his Debts, unless such Bankrupt shall, before such Time as the Commissioners shall have signed such Certificate, by Writing by him signed and delivered to one of the Commissioners or one of the Assignees, disclose the said Fraud, and object to the Reality of such Debt, such Certificate shall be (s) void, and such Bankrupt shall not be discharged from his Debts, or have any of the Benefits of 5 Geo. 2. c. 30.

When the Commissioners have assigned the Bankrupt's Estate, and given him his

(s) Stat. 24 Geo. 2. c. 57. S. 9.

M 3

Certificate,

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(t) Certificate and Discharge they have (t) executed their Power.

It has been (u) said, that it was not in the Power of the Great Seal, *after* a Certificate had been once duly allowed and confirmed, without any Objection made by the Creditors, and *after* the same had been delivered to the Bankrupt, and enjoyed by him for several Months, legally to recal such Certificate *ex Officio*, and deprive the Bankrupt of the Benefit of his Discharge, upon the Account of a Fact which was never proved, or ever objected to, *before* the Allowance of the Certificate; because (by the Statutes) conforming to the Acts, and a Certificate confirmed, was made an actual Discharge of the Bankrupt's Debts, due at the Time of his Bankruptcy, and a Revocation *after* the Debts were once extinguished, seem'd to come too late.

The above appears to be the Opinion only of Counsel, and so long ago too as the Year 1725; we therefore presume to

(t) But if the Bankrupt hath not obtained his Certificate, and after the Commission awarded and Distribution made of all the Bankrupt's Estate towards Satisfaction of the Creditors; Lands, Goods, &c. descend or come to the Bankrupt, they shall be subject to a new Sale and Distribution, for the Commissioners Power is not fully executed, until the Creditors be satisfied. *Billingb.* 118. but *Stone* 132. pl. 19. is *contra*.

(u) See *Bearves's Lex mercat. rediviv.* 499.

differ

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differ from it; because in the (w) Year 1732 the Legislature was pleased to declare, that the Certificate of a Bankrupt entered of Record, might be given in Evidence in any Courts, *unless* (x) *some one of his Creditors should prove that the same was fraudulently obtained*; from hence we infer that such Certificate *even after* it has been allowed and confirmed by the Great Seal; *after* it has been entered of Record, and *after* it has been produced in Evidence, if any Creditor *even then* shews that it was obtained fraudulently, that in such Case the Court cannot admit it to be read, and consequently that it will be no Bar or Discharge to any Action brought against the Bankrupt, but such Certificate on the contrary will be absolutely null and (y) void.

Lord Chancellor (z) *Parker* said, that the Bankrupt's 'Certificate discharged' (a)

(w) Stat. 5 Geo. 2. c. 30. S. 41.

(x) Stat. 5 Geo. 2. c. 30. S. 7.

(y) See Stat. 24 Geo. 2. c. 57. S. 9. fol. 244. 245. whereby the Legislature has more expressly declared that the Certificate of a Bankrupt shall be void, tho' allowed and confirmed.

(z) He further said, that it had been so determined by the Judges of the *King's Bench*. 3 *Wil.* Rep. 24. in Notes. S. P. *in totidem Verbis*, by Lord Hardwicke. *Atk.* Rep. 67. pl. 22. id. 138. S. P. by the Court of *King's Bench*. 2 *Stra.* 1157. See *Beawes's Lex mercat. redi-viv.* 498.

(a) And his Wife too for ever. *Wil.* Rep. 257. 10 Mod. 246. 247. *Gilb. Cas.* 327.

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him not only of what he owed separately, but also of what he owed jointly and on Partnership Account; because by the Act of Parliament, the Bankrupt, upon making a full Discovery, and obtaining his Certificate, was to be discharged of *all* Debts, and as the Debts which he owed jointly with another were equally his Debts, as those which he owed on his separate Account, that consequently he was to be discharged of both his joint and separate Debts.

It is a Discharge from an Action brought against the Bankrupt as Drawer of a Bill of Exchange, though the Bill be not returned and protested for *(b)* Non-acceptance till *after* the Bankruptcy, the Court being of Opinion that the Principal *(c)* was the *drawing* the Bills, and therefore *(d)* within the *(e)* Statutes; but Sir *John Strange* seems to doubt the Authority of this Resolution.

The Court of *King's (f) Bench* held, that a Bankrupt's Certificate discharged him from

(b) It was insisted, that the Cause of Action arose upon the Non-Acceptance and Protest, which were both necessary to be averred in order to maintain the Action, and the Charges thereof were to be recovered.
2 *Stra.* 949. 2 *Kil.* 239. pl. 191.

(c) 2 *Stra.* 949.

(d) 2 *Barnard.* K. B. 255. 256.

(e) Stat. 7 *Geo.* c. 31. 5 *Geo.* 2. c. 30. S. 22.

(f) 2 *Stra.* 1152.

a Contempt

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a Contempt in not performing an Award, this being a Demand for which Debt would lie, and the Act saying he should not be arrested, *prosecuted* or impleaded for any Debt due *before* the Bankruptcy, it would therefore be hard to keep him in Custody, when the Duty was discharged.

It will discharge him from a Judgment obtained *after* (g) his Bankruptcy on a Debt due *before*.

It will also discharge him from a Bond for Payment of Money by Installments, though *some* of them were not *payable* till *after* the Bankruptcy, if any of them were *due before*, for after the first Default of Payment the Bond became forfeited, and the Penalty was the Debt at (h) Law.

A Certificate discharges the Person of a Bankrupt and his Estate (i) subsequently accrued.

Where a Person discharged by the insolvent Debtor's Act, becomes Bankrupt afterwards, Lord *Hardwicke* said, that his Certificate must be special and that it would discharge (k) only his Person.

(g) 2 *Stra.* 1196.

(h) 2 *Barnes* Notes. C. P. 82. 87. 261. 302.

(i) But not the Estate in the Hands of the Assignee. *Atk.* Rep. 77.

(k) Not his future Estate and Effects. *Atk.* Rep. 257. p. 138.

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The Bankrupt's Certificate does not (l) discharge him from his Bond conditioned for Payment of a Sum of Money in Case one *M. L.* should marry him and should happen to survive him, because it was uncertain, whether this Bond would ever become due or not, it depending upon two (m) Contingencies; *First*, the Marriage taking Effect, and *Secondly*, the Wife's surviving, which had not both (n) happened at the Time of the Act of Bankruptcy committed.

It does not discharge him from a Bond of (o) Indemnity, where the Breach was after the Bankruptcy.

Three (p) Barons against one were of Opinion, that it did not discharge a Note payable a Twelvemonth after Date, on the Drawers becoming Bankrupts before it was due.

L. C. J. (q) *Hardwicke* said, that where there was an Act of Bankruptcy between the becoming Bail on Error, and the Affirmance; the Bankrupt was not discharged by his Certificate from his Recognizance, for that this was but a contingent Debt.

(l) *Barnard. K. B. 59. Com. Dig. 539.*

(m) 2 *Stra.* 868.

(n) 2 *Lord Raym.* 1549.

(o) 2 *Stra.* 1160.

(p) *Bunb.* 120. pl. 187.

(q) 2 *Stra.* 1043.

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The Bankrupt's Certificate will not discharge him from Debts which he owes as (r) Executor.

The Certificate of one Bankrupt Partner does not (s) discharge the other.

The Allowance of a Bankrupt's Certificate will not discharge his (t) Sureties, but they may be proceeded against notwithstanding such allowance.

Lord (u) *Hardwicke* said, that it would not discharge him from a Commitment on Behalf of the Crown.

Lord *Talbot* (w) said, that notwithstanding the Effects of a Bankrupt in the Plantations were liable to the Commission here, and the Right was vested in the Assignees; and tho' it seemed reasonable that his Certificate should be equally extensive as his Discharge; yet as the Laws of *England*, made since *Barbadoes* and the other Plantations were settled, did not ex-

(r) See *Atk. Rep.* 101. pl. 50. 102. pl. 51. *Wil. Rep.* 214. 10 *Mod.* 162. 163. 245. *Gilb. Cal.* 323.

(s) *Stat.* 10 *An. c.* 15. S. 3.

(t) *Com. Dig.* 539. *Atk. Rep.* 84. Lord *Mansfield* said, (which was agreed to by the other Judges) that if the Certificate was obtained *before* the Bail were *fixed*, they should be discharged; but if they were *fixed* before the Certificate was obtained, they remained liable. *Bur. Rep.* 245. 436.

(u) *Atk. Rep.* 262. pl. 143.

(w) *Beaumont's Lex mercat. redig.* 479. The late L. C. *Ryder* was of the same Opinion, and for the same Reasons; his Opinion was signed July 1. 1738.

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tend to them unless they were expressly named, and as the Laws relating to Certificates did not expressly extend to the Plantations, he was of Opinion a Certificate confirmed here, would be no (x) Discharge to the Bankrupt, if a Suit was commenced against him in *Barbadoes*, or the other Plantations.

(x) But the late Sir *John Strange* was of Opinion (which he signed 7 June 1738) that unless the Bankrupt's Debts in *Barbadoes* were secured by some Mortgage or Pledge, the Certificate would extend to discharge them.

C H A P. VIII.

The Dividend.

THE (y) Commissioners after (z) the Expiration of four Months, and within twelve Months from the Time of issuing the Commission, (twenty one Days Notice having been previously given in the *Gazette*, of the Time and Place they and the (a) Assignees intend to (b) meet to

* (y) The Assignees having refused to make a Dividend, Lord *Hardwicke* ordered, they should attend the Commissioners at a Sitting to be appointed by them for that Purpose, and that if the Commissioners thought it proper for the Assignees to make a Dividend, that it should be advertized accordingly. *Atk. Rep.* 91. pl. 39.

(z) Though till the four Months are passed the Commissioners cannot make Distribution, yet they may sell and prepare for a Distribution presently upon Execution of the Commission, within the four Months; so resolved in *Hut. Rep.* 38. Lord *Hardwicke* said, an Attempt to make the Court Judges in what Manner the Estate and Effects of a Bankrupt should be distributed before the Expiration of four Months from the Date of the Commission, was an Attempt absolutely to change the Method chalked out by the Act, and ought to meet with the utmost Discouragement. *Atk. Rep.* 107.

(a) Upon every such Meeting, the Assignees shall produce Accounts of their Receipts and Payments, &c. of what shall remain out standing, and shall (if the Creditors present require the same) be examined upon Oath, or solemn Affirmation, touching the Truth of such Accounts; and the Assignees shall be allowed all just Allowances, Stat. 5 Geo. 2. c. 30. S. 33.

(b) At which Time the Creditors, who have not before proved their Debts, shall be at Liberty to prove
make

make a Dividend) shall order such Part of the neat Produce of the Bankrupt's Estate in the Hands of the Assignees, as they shall think fit, to be divided amongst the Creditors, and shall make such Order for a Dividend in Writing, and shall cause one Part of such Order to be filed amongst the Proceedings under the Commission, and shall deliver unto each of the Assignees a Duplicate of such (c) Order (d).

Upon the common Equity of the Court of *Chancery*, if Creditors will make an Affidavit that they have not read the *Gazette*, they will be admitted, so as not to disturb the former Dividend, and by that means must, in the first Place, be brought

the same; which Meeting for the City of *London*, and all Places within the Bills of Mortality, shall be at *Guildhall*. Stat. 5 Geo. 2. c. 30. S. 33.

(c) Which Order shall contain an Account of the Time and Place of making such Order, and the Sum total of the Debts proved, and the Sum total of the Money remaining in the Hands of the Assignees, and how much in the Pound is then ordered to be paid; and the Assignees in Pursuance of such Order, and without any Deed of Distribution, shall forthwith make such Dividend, and take Receipts in a Book from each Creditor. Stat. 5 Geo. 2. c. 30. S. 33. An Assignee cannot stop a Person's Share in a Dividend on Account of his own private Debt, owing to him from that Person, for he ought not to blend (said Lord *Hardwicke*) his own private Affairs with the Commission, to which he is only a Trustee. *Ark. Rep.* 91.

(d) Stat. 5 Geo. 2. c. 30. S. 33.

up

up equal to the Creditors under the former Dividend, before the Commissioners can proceed to make a second; by Lord (e) *Hardwicke*.

Within eighteen Months after issuing the Commission, the Commissioners shall make a second Dividend, in Case the Estate was not wholly divided upon the first, and shall cause Notice to be inserted in the *Gazette*, of the Time and Place they intend to meet to make a second Dividend, and for the Creditors, who shall not before have proved their Debts, to come and prove the same; and at such meeting every Assignee shall produce upon Oath or Affirmation his (f) Accounts, and what upon the Balance shall appear to be in his Hands, shall by like order of the Commissioners be forth-

(e) *Atk. Rep.* 209.

(f) We have observed a subsequent Bill to that settled at the second Sitting usually an *Item* in this Account, but it very seldom appears to have been *taxed*, without which we apprehend the Commissioners ought not to look upon it as a just Allowance, because to the End that Commissions of Bankrupt may be carried on and prosecuted with as little Expence as reasonably may be, all Bills of Fees or Disbursements claimed or demanded by any Solicitor, Clerk or Attorney employed under any Commission of Bankrupt, shall be settled, adjusted, and certified by one of the Masters of Chancery, and *so much* as the Master shall certify to be due to such Solicitor, &c. and no more, shall be paid by the Assignee under the Commission. Stat. 5 Geo. 2. c. 30. S. 46. See *Atk. Rep.* 88.

with

with divided, which second Dividend shall be final, unless any Suit shall be depending, or any Part of the Estate standing out, or unless some *future* (g) Estate of the Bankrupt's shall afterwards come to the Assignees, in which Case, the Assignees shall, as soon as may be, convert such *future* Estate into Money, and shall, within two Months after, by the like Order of the Commissioners, divide the same (h).

(g) It seems that the Word "*future*" should be expunged; for Lord Hardwicke said, if a Bankrupt after his Discharge got *future* Effects, in Point of Justice and Conscience he ought to make good the Deficiency, though no Court of Equity would do it for the Creditor. *Atk. Rep.* 256. See *id.* 79. & Stat. 5 Geo. 2. c. 30. S. 9.

(h) Stat. 5 Geo. 2. c. 30. S. 37.

C H A P. IX.

The Bankrupt's Allowance, and herein
of the Overplus.

IF (i) the neat Produce of the Bankrupt's Estate shall not amount to so much as will pay his Creditors ten Shillings in the Pound, after all Charges first had and deducted, then the Bankrupt shall be allowed and paid by the Assignees, so much Money as the Assignees and Commissioners shall think fit to allow, not exceeding three (k) Pounds *per Centum*.

Lord (l) *Hardwicke* was of Opinion on the Construction of this Clause of the Act of Parliament, that though the Bankrupt did surrender and conform, yet that he was not intitled to the Allowance given to Bankrupts unless he had obtained his Certificate, for if the Creditors should consent

(i) Stat. 5 Geo. 2. c. 30. S. 8.

(k) As this Clause of the Statute has not the Words "*over and above such Allowance*," and as it does not limit the Allowance to any particular Sum, it seems that a Bankrupt, who pays only 9s 9d in the Pound may be entitled to a larger Allowance than one who pays even 15s in the Pound; for the latter cannot receive more than 300l. whereas the former may near 500l.

(l) *Atk. Rep.* 208.

258 Bankrupt's Allowance. Ch. 9.

to giving it him before, it would be of no Service, as they might take it from him again the next Moment, for it would be liable in his Hands to satisfy any Creditors, till he was entirely cleared by the Certificate; and he further said that till after a final Dividend, it could not be seen whether the Bankrupt would be intitled to any Allowance at all, for the Act of Parliament directed that the neat Produce of his Estate should be sufficient to pay the Creditors of the Bankrupt, who had proved their Debts under the Commission the Sum of ten Shillings in the Pound, *over and above such Allowance.*

Lord (m) *Hardwicke* ordered an Assignee of a Bankrupt's Estate out of the Effects in his Hands to pay his Administrator the Allowance under the Act of Parliament at the Rate of 5*l. per Cent.* upon the Money got in from the Bankrupt's Estate, not exceeding the Sum of 200*l.* the Bankrupt in his Life Time having made a neat Dividend of ten Shillings in the Pound.

The Commissioners shall, upon lawful Request to them made by the Bankrupt, not (n) only make a true Declaration to him of the employing and bestowing his Lands, Tenements, Hereditaments, Offices,

(m) *Atk. Rep.* 209. pl. 114. 208. pl. 212.

(n) *Stat.* 13 *El.* c. 7. S. 4.

Fees,

Fees, Goods, Wares, Money, Chattels, and Debts paid and satisfied to his Creditors; but also make Payment of the (o) Overplus of the same, if any such shall be, to the said Bankrupt, his Executors, Administrators, or Assigns; and the Bankrupt, after full Satisfaction of his Creditors, shall have full Power and Authority to recover and receive the Residue and Remainder of the (p) Debts to him owing.

(o) Lord *Hardwicke* said, that the Surplus to be paid over to the Bankrupt, was only the Surplus after Payment of the whole Debts; for it would be vain to pay any other Surplus, when it might be recovered from him again by the Creditors. *Atk. Rep.* 78.

(p) Stat. 1 Jac. c. 15. S. 15. Lord *Hardwicke* directed, that a Bankrupt who had paid 14s and 6d in the Pound, who had his Certificate, and a Release from his Creditors of all further Demands, should stand in the Place of the Assignees to get in the Remainder of the Debts, on giving a proper Indemnity to the Assignees, that they might not be called to an Account for such Money so received. *Atk. Rep.* 145. pl. 84.

APPENDIX

OF

PRECEDENTS.

INTENDING to observe the same Method in this practical Part, as in the Theory, we will lay before the Solicitor approved Precedents of,

1. Trading.
2. Acts of Bankruptcy.
3. Debts of the petitioning Creditors.

1. (a) Trading.

(b) Banker.

At Serle's (c) Coffee House, *Lincoln's Inn*, in the County of *Middlesex*.—*June 1767*.

“ Z. A. of, &c. being (d) sworn
Thomas Nugent. “ and examined the Day and
“ Year, and at the Place above-

(a) See fol. 7 to 34.

(b) See fol. 8.

(c) The Place where the Commissioners meet to open the Commission; this Meeting may be wherever the Parties concerned think proper.

(d) If the Examinant happens to be a Quaker, this Deposition must run thus; “ Z. A. of &c. being one of the People called Quakers, being examined on the Day and Year, and at the Place abovementioned, upon his solemn Affirmation saith, &c.” [*then it goes on as above.*]

“ mentioned,

“ mentioned, before the major (e) Part of the Com-
 “ missioners named and authorized in and by a
 “ Commission of Bankrupt awarded and issued,
 “ and now in Prosecution against *Francis Gibbons*
 “ of &c. upon his Oath faith, that he hath
 “ known the said *Francis Gibbons*
John Fenshaw. “ for the Space of twelve Months
 “ now last past, during (f) which
 “ Time the said *Francis Gibbons* used and exer-
 “ cised the Trade and Business of a Banker, and
 “ as such, was intrusted with the Money Goods
 “ and Effects belonging to other Persons (g), and
 “ merchandized therewith; and sought and
 “ endeavoured to get his Living thereby, as others
 “ of the same Trade and Busi-
Champion Branfil. “ nefs usually do.” Z. A.

Pawnbroker (h).

At, &c.

Thomas Nugent. “ Y. X. of &c. being sworn and
 “ examined the Day and Year,
 “ and at the Place abovementioned, before the
 “ major Part of the Commissioners named and
 “ authorized in and by a Commission of Bank-
 “ rupt awarded and issued, and now in Prosecu-
 “ tion against *Francis Gibbons* of &c. upon his
 “ Oath faith, that the said *Francis Gibbons* (or the

(e) Of whom must be, one of the two first named in the Com-
 mission. See 3 *Keb.* Rep. 837. pl. 74.

(f) It is not necessary that the Party should have traded for any
 particular Length of Time.

(g) “ And did draw and re-draw Bills of Exchange, and dis-
 counted promissory Notes, Bills of Exchange, &c.” may be added,
 if the Fact will support it.

(h) See *f.l.* 9. 23.

“ said

“ said Bankrupt) did exercise and
John Fenshaw. “ carry on the Trade and Business
 “ of a Pawnbroker, and as such
 “ received Goods and Effects by Way of Pawn
 “ or Pledge, and lent Monies thereon, and hath
 “ so done, to this Examinant’s Knowledge for
 “ the Space of two Years and upwards now last
 “ past, and sought and endeavoured to get his
 “ Livelihood thereby, in the same Manner, as
 “ others of that Trade and
Champion Branfil. “ Business usually do.” Y. X.

Merchant (i).

At, &c.

Thomas Nugent. “ W. S. of, &c. being sworn
 “ and examined the Day and
 “ Year, and at the Place abovementioned, upon
 “ his Oath saith, that he hath known *Francis*
 “ *Gibbons* of, &c. the Person against whom the
 “ Commission of Bankrupt now in Prosecution,
 “ is awarded and issued, for these three Years
 “ last past, during which Time
John Fenshaw. “ he used and exercised the Busi-
 “ ness of a Merchant, and traded
 “ from this Kingdom of *England*, to *New Eng-*
 “ *land* beyond the Seas, and bought Cloths, Stuffs,
 “ *British* Linen, and other Things in Exchange
 “ of such Cloths and other Things, and sought
 “ and endeavoured to get his Living there-
 “ by, as other Merchants usu-
Champion Branfil. “ ally do.” W. S.

(i) See fol. 3.

Or

Or thus,

Thomas Nugent. "During which Time he carried on the Trade of a Merchant at his House situate, &c.
John Fenshawe. "by exporting and importing divers and sundry Kind of Wares, Goods, and Merchandizes, and sought, &c."
Champion Branfil. "dizes, and sought, &c."

Exchange (k) Broker.

At, &c.

Thomas Nugent. "M. O. of, &c. [as before to] during which Time he carried on and exercised the Trade and Business of a Broker in buying and selling (l) Stock by Commission, and procuring Insurances on Ships and Cargoes for Lucre and Gain, and sought and endeavoured to get his Livelihood thereby, as others of the same Trade and Business are used to do."
John Fenshawe. "by Commission, and procuring Insurances on Ships and Cargoes for Lucre and Gain, and sought and endeavoured to get his Livelihood thereby, as others of the same Trade and Business are used to do."
Champion Branfil. "as others of the same Trade and Business are used to do."

M. O.

(m) Factor.

At, &c.

Thomas Nugent. "C. D. of &c. [as before to] during which Time he used and exercised the Trade of a Factor by buying and selling
John Fenshawe. "Factor by buying and selling

(k) See fol. 9.

(l) Or such oil &c: Business as they generally transact.

(m) See fol. 9.

"Goods

Cham

Thom

John

Cham

Thom

John

Cham

(n) &

Depositions of Trading. 265

Champion Branfil. "Goods by Commission, and
 "sought, and endeavoured to get
 "his Living thereby, as others of
 "the same Trade usually do."
 C. D.

(n) *Scrivener.*

At, &c.

Thomas Nugent. "A. T. of, &c. [as before to]
 "during which Time he carri-
 "ed on the Trade or Profession
 "of a Scrivener, and as such re-
 "ceived other Men's Monies
John Fenshawe. "and Estates into his Trust
 "and Custody, and made Mer-
 "chandize thereof, and sought
 "and endeavoured to get his
 "Living thereby, in the same
 "Manner, as others of that
Champion Branfil. "Profession are used to do." A. T.

Hofier.

At, &c.

Thomas Nugent. "Q. S. of, &c. [as before to]
 "during which Time he exer-
 "cised the Trade or Business
 "of an Hofier in buying and
John Fenshawe. "selling Stockings and Gloves,
 "and sought and endeavoured
 "to get his Living thereby as
 "others of the same Trade are
Champion Branfil. "used to do." Q. S.

(n) See fol, 25.

N

Shoemaker.

Shoemaker (o).

At, &c.

Thomas Nugent.

" N. O. of, &c. [as before to]
" during which Time he used
" exercised and carried on the
" Trade and Business of a
" Shoemaker, by buying of
" Leather and working up and
" converting the same into Shoes
" Boots and Splatterdashers,
" and selling the same, when
" so worked up and converted
" as aforesaid, and sought, &c.

Champion Branfil. " [as above."] N. O.

Taylor (p).

At, &c.

Thomas Nugent.

" D. C. of, &c. [as before to]
" during which Time he used
" the Trade of a Taylor in
" buying Cloth, Silk, Linnen,
" Buckram and other Materials,
" and making them up into
" Cloaths, and selling the same
" when so made up, and sought,
" and endeavoured to get his
" Living thereby, as others in
" that Trade are wont to do."

Champion Branfil. " D. C.

Dealer and Chapman.

If the Solicitor should happen to find it difficult, to particularize the Trade of the Party; he may denominate him a "*Dealer and Chapman*," for this general Description, it is said, will include all Traders, a "*Chapman*" being one who buys and sells any (q) thing.

(o) See fol. 10.

(p) See fol. 10.

(q) 2 Black. Com. 476.

These

These Depositions, we presume, will be sufficient for the practising Solicitor to frame the Description of any other Trade whatever.

2. Acts of Bankruptcy.

Keeping (q) House.

At, &c.

Thomas Nugent. " O. N. of &c. one of the
 " Servants of *Francis Gibbons*
 " of, &c. the Person against whom the Com-
 " mission of Bankrupt now in Prosecution, is
 " awarded and issued, being sworn and examined
 " on the Day and Year, and at the Place first
 " abovementioned, upon his Oath saith, that on
 " Saturday Morning last, the said *Francis Gibbons*
 " gave Orders to this Examinant to deny his
 " being at Home, in case any of his Creditors
 " should come to his House to enquire for him;
 " and that after this Examinant had received
 " such Directions from his said Master, one Mr.
T. about eleven of the Clock
John Fenshawe. " of the same Morning, came
 " to his Master's House and
 " enquired of this Examinant for the said *Francis*
 " *Gibbons*, and desired to speak with him, but
 " this Examinant denied his being at Home, and
 " refused to let the said Mr. *T.* see the said *Francis*
 " *Gibbons*, (who was then above Stairs in his
 " Chamber, as he believes) pursuant to the order
 " and Direction by him this Examinant received
 " from the said *Francis Gibbons*, this Examinant
 " at the same Time knowing that the said Mr.
T. was a Creditor of the said
Champion Branfil. " *Francis Gibbons.*" O. N:

(?) See fol. 40.

N 2

Taking

Taking (r) Sanctuary.

At, &c.

Thomas Nugent.

" *T. W.* of, &c. being sworn
 " and examined on the Day
 " and Year, and at the Place abovementioned
 " upon his Oath saith, that *Francis Gibbons*, the
 " Person against whom the Commission of Bank-
 " rupt now in Prosecution is awarded and issued,
 " did within the Space of three Months now last
 " past take an Apartment or Lodgings in *Scotland*
 " Yard in the City and Liberty of *Westminster*,
 " for the Purpose of screening himself from his

" Creditors, as this Examinant
John Fenshawe. " verily believes, because the
 " said *Francis Gibbons* declared to

" this Examinant that the Reason of his taking
 " the said Apartment or Lodgings in *Scotland* Yard
 " was, for Fear of his being arrested by his Cre-
 " ditors, some or one of them for Debt, and at
 " the same Time informed this Examinant that
 " the said Apartment or Lodgings were privileged,
 " they being in the Verge of
Champion Branfil. " the Court." *T. W.*

Departing from his Dwelling (s) House.

At, &c.

Thomas Nugent.

" *A. B.* of, &c. [*as in the last*
 " to " *did*"] hath departed from
 " and left his Dwelling House

(r) See fol. 45.

(s) See fol. 48.

John Fenshawe.

“ [or his Lodgings in this Ex-
“ aminants House, and usual
“ Place of Habitation] for seve-
“ ral Days now last past, and
“ from the Discourse which this
“ Examinant hath had with the
“ said *Francis Gibbons*, and as
“ this Examinant verily beleives,
“ he doth secrete himself from
“ his Creditors, for Fear of be-
“ ing arrested by them or some
“ or one of them for Debt.”

Champion Branfil.

A. B.

Or thus,

At, &c.

Thomas Nugent.

“ Z. X. of, &c. being sworn
“ and examined the Day and
“ Year, and at the Place above-mentioned, be-
“ fore the major Part of the Commissioners named
“ and authorized, in and by a Commission of
“ Bankrupt awarded and issued, and now in Pro-
“ secution against *Francis Gibbons* of, &c. upon
“ his Oath saith, that the said *Francis Gibbons*
“ through Misfortunes in Trade, being rendered
“ incapable to pay all his Creditors their full and
“ just Demands, did send this Examinant up to
“ *London*, to endeavour to compromise his Affairs
“ with his Creditors, and accordingly this Exami-
“ nant did come up to *London*, on or about
“ the Day of last past, and met the
“ said *Francis Gibbons* at *Edmonton*, at which Time
“ the said *Francis Gibbons* declared to this Exami-
“ nant, that he was unwilling and afraid to meet
“ his Creditors; and that on or about the same
“ Time, he gave him a Letter of Attorney to

N 3

“ make

“ make an End of his Affairs, if the Creditors
 “ would consent thereto; and also declared to
 “ this Examinant, that if his said Creditors would
 “ not comply with such Terms as this Exami-
 “ nant would propose to them, that then he, this
 “ Examinant, should act and transact his Affairs
 “ for the best of his Interest;
John Fenshaw. “ and this Examinant further
 “ saith, that the said *Francis Gib-*
 “ *bons* hath several Times declared to this Exami-
 “ nant, that in case any Statute of Bankruptcy
 “ should be taken out against him, that he would
 “ not appear thereto; and when this Examinant
 “ saw him last, which this Examinant believes to
 “ be on or about the Day of last past,
 “ the said *Francis Gibbons* declared to this Exami-
 “ nant, that in case his Creditors would not
 “ comply with the Proposals he had Power to make
 “ them, that they should not hear from him till
 “ next, and believes that Nobody either in *Lon-*
 “ *don*, or, &c. knows where he is gone, and this
 “ Examinant further saith, that he hath perused the
 “ three paper Writings, produced to this Exami-
 “ nant, marked respectively *A. B. C.* hereunto an-
 “ nexed, and saith, that he, this Examinant, well
 “ knows his Brother's Hand-writing, and that
 “ the Names and Letters *Francis Gibbons* to the
 “ said three Paper Writings, respectively sub-
 “ scribed, are of the proper Hand-writing of the
 “ said *Francis Gibbons*, the Person
Champion Branfil. “ against whom the Commission
 “ is awarded.” Z. X.

Making

Making a fraudulent (t) Grant.

At, &c.

Thomas Nugent. " P. R. of, &c. being sworn
 " and examined on the Day and
 " Year, and at the Place abovementioned, upon
 " his Oath saith, that he was present and did see
 " *Francis Gibbons* of, &c. the Person against whom
 " the Commission of Bankrupt, now in Prose-
 " cution, is awarded and issued, duly sign, seal,
 " and as his Act and Deed deliver, a certain In-
 " denture [*here set forth a short Recital of the material*
 " *Parts of it*] and this Examinant further saith,
 " that the Name *Francis Gibbons* subscribed [*or*
 " *Mark set*] against the Seal of
John Fenshaw. " the said Indenture, (now pro-
 " duced by him this Examinant,
 " at the Time of this his Examination, and ex-
 " hibited (u) to the major Part of the Commis-
 " sioners in and by the said Commission named
 " and authorized) is the proper Hand-writing of
 " [*or made by*] the said *Francis Gibbons*, and this
 " Examinant further saith, that the Name of this
 " Examinant subscribed to the said Indenture as
 " a Witness to the Execution thereof, is of
 " this Examinant's own proper
Champion Branfil. " Hand-writing." P. R.

(t) See fol. 52.

(u) The form of the Exhibit is thus,

At, &c.

Exhibited to us this Day of *June 1767*, in a Commission
 of Bankrupt against *Francis Gibbons*.

Thomas Nugent.

John Fenshaw.

Champion Branfil.

Obtaining an illegal (w) Protection.

At, &c.

Thomas Nugent.

“ S. M. of, &c. being sworn
 “ and examined the Day and
 “ Year, and at the Place abovementioned, before
 “ the major Part of the Commissioners named
 “ and authorized in and by the Commission of
 “ Bankrupt, now in Prosecution, awarded and
 “ issued against *Francis Gibbons* of, &c. upon his
 “ Oath saith, that the said *Francis Gibbons* is pro-
 “ tected (x) by

Ambassador to

“ he this Examinant hav-
 “ ing seen the said Protection under the Hand and
 “ Seal of the said Ambassador, in the Possession
 “ of the said *Francis Gibbons*. And this Exami-
 “ nant further saith that he verily believes that
 “ the said *Francis Gibbons* procured the said Pro-
 “ tection for the Purpose of screening himself
 “ from his Creditors, and to prevent his being
 “ arrested by them for Debt,

John Fenshawe.

“ because he this Examinant on
 “ or about the *fifth* Day of *March*
 “ now last past, was present and in Company
 “ with the said *Francis Gibbons* and *William* (y)
 “ *Whitaker* (whom this Examinant was credibly

(w) See fol. 57.

(x) If the Party is protected by a Peer or Member of Parlia-
 ment, the Deposition must be varied accordingly.

(y) It may be prudent, and indeed perhaps thought absolutely
 necessary that the Officer should join in this Deposition in order
 to corroborate the Circumstances relating to the Arrest, as it
 seems not to be the best Evidence that the Nature of the Case
 will admit of, for what a third Person said, is no Evidence, where
 that third Person himself may be had. See Theo. Evid. 110. 111.
 Gilb. Evid. 152. Tri. per Pais 422.

“ informed

"informed is one of the Officers belonging to
 "the Sheriff of *Middlesex*, which Information
 "this Examinant verily believes to be true) who
 "told the said *Francis Gibbons* that he had a War-
 "rant to arrest him the said *Francis Gibbons* at the
 "Suit of *James Taylor* for 500*l.* Debt, where-
 "upon the said *Francis Gibbons* produced his said
 "Protection to the said *William Whitaker* and
 "claimed Privilege by Virtue thereof, and bad
 "the said *William Whitaker* to arrest him at his
 "Peril, which the said *William Whitaker* declined
 "to do, on Account of the said Protection, as
 "this Examinant believes for
Champion Branfil. "the Reasons aforesaid."

S. M.

Lying in (y) Prison two Months.

At, &c.

Thomas Nugent. "W. W. of &c. Officer to
 "the Sheriff of *Middlesex*, being
 "sworn and examined before the major Part of
 "the Commissioners named and authorized in and
 "by a Commission of Bankrupt awarded and is-
 "sued, and now in Prosecution against *Francis*
 "*Gibbons* of &c. on the Day and Year, and at
 "the Place abovementioned, upon his Oath
 "saith, that on the Day of
 "last he, this Examinant, arrested the said
 "*Francis Gibbons* by Virtue of [*name the*
 "*Writ*] and detained him in his
John Fenshawe. "Custody until the Day
 "of next following,
 "when he, this Examinant, in Obedience to his
 "Majesty's Writ of *Habeas Corpus cum Causa*, di-

(y) See fol. 59.

N 5

"rected

“ rected to the said Sheriff of *Middlesex*, did con-
 “ duct the Body of the said *Francis Gibbons*
 “ before Sir *Edward Clive*, Knight, one of the
 “ King’s Justices of the Bench at his House in
 “ *Great Ormond Street*, in the said County of *Mid-*
 “ *dlesex*, according to the Command of the said
 “ Writ, which said Justice did then and there
 “ receive from him this Examinant, the Body of
 “ the said *Francis Gibbons*, and
Champion Branfil. “ did commit him to the Custody
 “ of the Warden of the Fleet.”

W. W.

At, &c.

Thomas Nugent. “ *D. H.* of &c. Gentleman,
 “ who executes the Office of
 “ Clerk of the Papers of (z) the Fleet Prison for
 “ *John Eyles*, Esq. Warden of the said Prison, be-
 “ ing sworn and examined the Day, Year, and at
 “ the Place abovementioned, upon his Oath saith,
 “ that *Francis Gibbons*, the Person (as this Depo-
 “ nent is informed and believes) against whom the
 “ Commission of Bankrupt now in Prosecution is
 “ awarded and issued, was on the Day of
 “ last committed to his Majesty’s Prison of
 “ the Fleet, by the Honourable Sir *Edward Clive*,
 “ Knight, one of the Justices of his Majesty’s
 “ Court of *Common Pleas* at *Westminster*, upon a
 “ Writ of *Habeas Corpus cum Causâ*, directed to the
 “ Sheriff of *Middlesex*, who certified and returned
 “ to the said Writ, that the said *Francis Gibbons*,
 “ in the said Writ named, was on the Day of
 “ in the Year of his present Majesty’s
 “ Reign, taken and detained by him the said She-
 “

(z) Or the King’s Bench Prison for
 of the said Prison.

Aston Esq. Marsh

“ *iff*”

“riff, by Virtue of a Writ of
John Fenshawe. “*[name the Writ]* to answer
 “*[name the Plaintiff in Writ]* of
 “a Plea of Trespass upon the Case to the Damage
 “of the said *[the Plaintiff]* of 1200*l.* which said
 “*Francis Gibbons* so taken and detained as afore-
 “said, is, as this Examinant is informed and
 “believes, the same Person against whom the
 “aforesaid Commission is awarded: And this
 “Examinant further saith, that the said *Francis*
 “*Gibbons* hath, ever since the Day of his said
 “Commitment to the Prison of the Fleet aforesaid,
 “remained and continued a Prisoner therein, at
 “the Suit of the said *[the Plaintiff]* and now is
 “a Prisoner there, charged in
Champion Branfil. “Manner as aforesaid.”

D. H.

We believe modern Commissioners admit the
 Certificate of the Clerk of the Papers, accom-
 panied with a Deposition of seeing it signed by
 him, sufficient Proof of the Arrest and Imprison-
 ment, and do not require the Officer's Evidence
 at all; as we cannot think that the modern
 Practice is by any Means satisfactory, for the
 Reasons given in fol. 272. Note (y); we decline
 making such Certificate and Deposition Prece-
 dents.

Member of (a) Parliament.

A', &c.

Thomas Nugent. “*Gyles Simson* of the City of
 “*London* Merchant, and *John*
 “*Cox* of *Lincoln's-Inn*, in the County of *Middlesex*,
 “Gentleman, being severally sworn and examined,

(a) See fol. 22, 68.

N 6

“the

" the Day and Year, and at the Place abovementioned, before the major Part of the Commissioners named and authorized in and by a Commission of Bankrupt awarded and issued, and now in Prosecution against *Francis Gibbons* of &c. upon their Oaths say; and first this Examinant *Giles Simson* for himself saith, that on or about the Day of now last past, he this Examinant by Virtue of an Act of Parliament made and passed in the fourth Year of the Reign of his present Majesty King *George the Third*, intituled, " An Act for preventing Inconveniences arising in Cases of Merchants, and such other Persons as are within the Description of the Statutes relating to Bankrupts, being intituled to the Privilege of Parliament, and becoming insolvent," did make an Affidavit in his Majesty's Court of King's Bench at *Westminster*, that the said *Francis Gibbons* " was justly indebted unto him *John Fenshawe*. " this Examinant in the Sum of " five hundred Pounds, and that " the said *Francis Gibbons*, as this Examinant verily believed, was a Trader within the Description of the Statutes relating to Bankrupts. And this Examinant further saith, that the said *Francis Gibbons* hath not paid, secured, or compounded the said Debt, or entered into any Bond to pay such Sum as should be recovered in the Action, in Pursuance of, and according to the Directions of the said Act of Parliament, to the Knowledge or Belief of this Examinant. And this Examinant *John Cox* for himself saith, that he did on the said Day of file of Record in the said Court of King's Bench the said Affidavit so sworn by the said other Examinant *Giles Simson* as aforesaid. And that " he

Debts of the petitioning Creditors. 277

“ he did on the Day of sue out of
“ the same Court of *King's Bench* a Summence
“ against the said *Francis Gibbons*, and on the next
“ Day, being the Day of now last
“ past, served him the said *Francis*
Champion Branfil. “ *Gibbons* personally with a Copy
“ thereof.” *Gyles Simson*.

In our Search after Precedents of Acts of Bankruptcy, we met with the following extraordinary one, viz. “ Deposition of an Act of Bankruptcy as concerted by the Bankrupt himself.” Such a Bankruptcy as this would (as my Lord (*b*) *Hardwicke* well expressed it) be turning the Edge of the Law against Creditors in Favor of Bankrupts, which was not (continued his Lordship) to be suffered in a commercial Country.

The above Forms may be thought sufficient to enable the Solicitor to draw a proper Deposition, on any other Act of Bankruptcy; who is desired to observe that though we have all along made the Trading and Act of Bankruptcy distinct Depositions, yet they may be, and indeed generally are, in the Knowledge of one and the same Person.

3. Debts of the petitioning Creditors.

Affidavit (c) of one petitioning Creditor's Debt.

“ *Charles Jones* of *High Holborn*, in the County
“ of *Middlesex*, Mercer, maketh Oath and saith,
“ that *Francis Gibbons*, of the City of *London*, Mer-
“ chant, is indebted to this Deponent (*d*) in the

(b) *Atk. Rep.* 87.

(c) All Affidavits are to be engrossed on a treble six-penny stamped Sheet of Paper. Stat. 5 *Wil. & Mar.* c. 21. S. 3. 9 & 10 *Wil.* 3. c. 25. S. 28. 32 *Geo.* 2. c. 35. S. 2.

(d) If in Partnership; and to *Thomas Franks*, *James Juba*, &c. this Deponent Partners in Trade.

“ Sum

278 Debts of the petitioning

“ Sum of 100*l.* (e) and upwards, and that the said
 “ *Francis Gibbons* is become Bankrupt within
 “ some or one of the Statutes made and now in
 “ Force concerning Bankrupts, as this Deponent
 “ is informed and believes (f).”

Charles Jones.

Sworn, &c.

Affidavit of several (g) petitioning Creditors.

“ *A. B.* of &c. *C. D.* of &c. *E. F.* of &c.
 “ *G. H.* of &c. severally make Oath and say;
 “ and first this Deponent *A. B.* for himself saith,
 “ that *Francis Gibbons* of &c. is justly indebted
 “ unto him this Deponent in the Sum of Thirty
 “ Pounds. And this Deponent *C. D.* for himself
 “ saith, that, (b) &c. [as before] and all these Depo-
 “ nents say, that they verily believe that the said
 “ *Francis Gibbons* is become Bankrupt within the
 “ true Intent and Meaning of some or one of the
 “ Statutes made and now in Force concerning
 “ Bankrupts.”

A. B. E. F.

All (i) sworn, &c.

C. D. G. H.

(e) Lord *Hardwicke* said, that the Affidavit on suing out a Com-
 mission of Bankrupt was general, and that it did not mention the
 Particulars by which the Bankrupt became indebted. *Atk. Rep.*
 153. pl. 92.

(f) If for a Country Commission; you add, “ And this De-
 ponent further saith, that the Commission, when obtained, will
 be executed at [some Country Place] aforesaid, or within ten Miles
 of the same, and not within forty Miles of *London*.” And the
 Names of the Commissioners are to be inserted at the Bottom.

(g) The Debt of two petitioning Creditors must be 150*l.* of
 three or more 200*l.*

(b) These petitioning Creditors Debts must amount all together
 to 200*l.*

(i) Sir *Joseph Jekyll*, Master of the Rolls, adjudged an Answer
 of two Defendants irregular, and suppressed it, because the *Jurat*
 was underwritten sworn only, not both sworn. *Moseley* 238. pl. 150.

The

The Affirmation of a Quaker.

"Thomas Denn of &c. being one of the People called (k) Quakers, upon his solemn Affirmation "saith &c." [as in an Affidavit, only that instead of the Word "*Deponent*" the Word "*Affirmant*" is made Use of.]

If the petitioning Creditor resides altogether in the Country, he must make an Affidavit before a Master extraordinary there, to be filed in the Secretary of Bankrupt's Office in London, and exhibited (l) to the Commissioners at their first Meeting.

The petitioning Creditor's Debt being drawn, engrossed on a treble (m) six-penny stamped Sheet of Paper, and sworn before a Master in Chancery, either at the public Office (n) in Symond's Inn, Chancery Lane, or at his own House; he must enter into a Bond to the Great Seal, in the Penalty of (o) 200*l.* conditioned to substantiate his Debt, and to prove the Party Bankrupt; this Bond is usually filled up and executed at the Secretary of Bankrupt's (p) Office, which is now

(k) A Quaker's Affirmation was rejected, because the Words "being one of the People called Quakers" were omitted.

(l) For the Form of the Exhibit, see fol. 271. Note (u)

(m) By Stat. 5 *Wil. & Mar.* c. 21. S. 3. 9 & 10 *W.* 3. c. 25. S. 28. 32 *Geo.* 2. c. 5. S. 2.

(n) The Hours of Attendance are from 11 o'Clock in the Morning, to one in the Afternoon, and from five in the Afternoon, to eight in the Evening, all the Year, except in Trinity Vacation, when Attendance is given only on Mondays, Wednesdays, and Fridays, from 11 in the Morning, till one in the Afternoon.

(o) We believe it has been determined that a Bankrupt may bring a special Action upon his Case, and recover beyond this Penalty.

(p) The Hours of Attendance are from nine o'Clock in the Morning, to one in the Afternoon, and from four o'Clock in the Afternoon, to eight in the Evening, both in Term Time, and Vacation,

up

up two Pair of Stairs, right Hand Door, No. 7. *Lincoln's Inn, New Square*; but notwithstanding this Usage, we apprehend that the Right of preparing this Bond is in the Clerk to the Commission.

The Creditor's (q) Bond to the Great Seal, on petitioning for a Commission of Bankrupt.

"KNOW all Men by these Presents, that I
 " *Charles Jones* of &c. am held and firmly
 " bound to *Charles Lord Camden* Baron of
 " *Camden Place* in the County of *Kent*, Lord
 " High Chancellor of *Great Britain*, in 200l.
 " of good and lawful Money of the said
 " Kingdom, to be paid to the said Lord
 " Chancellor, or his certain Attorney, his
 " Executors, Administrators or Assigns;
 " which Payment well and truly to be made,
 " I bind myself, my Heirs, Executors and
 " Administrators, firmly by these Presents,
 " sealed with my Seal, dated the Day
 " of in the *seventh* Year of the Reign
 " of our Sovereign Lord *George the Third*,
 " by the Grace of God, of *Great Britain*,
 " *France and Ireland*, King, Defender of the
 " Faith, &c. and in the Year of our Lord
 " 1767."

"The Condition of this Obligation is such,
 " that if the above bounden *Charles Jones* shall
 " prove, as well before the major Part of the
 " Commissioners to be appointed in a Commis-
 " sion of Bankrupt, against *Francis Gibbons* of &c.
 " as upon a Trial at Law, in Case the due issuing

(q) Which must be engrossed on a single 2s. 6d. stamped Sheet of Paper. By Stat. 5 W. & M. c. 21. S. 3. 9 & 10 W. 3. c. 25. S. 30. 12 An. St. 2. c. 9. S. 21. 30 Geo. 2. c. 19. S. 1.

" forth

“ forth of the said Commission shall be contested
 “ and tried, that the said *Francis Gibbons* stands
 “ justly indebted to the above bounden *Charles*
 “ *Jones* in the Sum of 100l. and is become Bank-
 “ rupt within the Meaning of some or one of the
 “ Statutes concerning Bankrupts, and if the above
 “ bounden *Charles Jones* shall cause the Commis-
 “ sion to be executed according to the Directions
 “ of an Act of Parliament passed in the *fifth* Year
 “ of his late Majesty's Reign, intituled, “ An
 “ Act to prevent the committing of Frauds by
 “ Bankrupts (r);” then this Obligation to be
 “ void, or else to be and remain in full Force and
 “ Virtue.”

“ *Charles Jones, L. S.*”

“ Sealed and delivered (being
 “ first duly stamp'd) in the
 “ Presence of.”

Samuel Garth.

William Luther.

If the petitioning Creditor's (s) Debt shall not be really due, or if after the Commission taken out, it cannot be proved, that the Party was Bankrupt at the Time of issuing the Commission, but on the contrary it shall appear, that the Commission was taken out fraudulently or maliciously, then the Great Seal shall on the Petition of the Bankrupt, examine into the same and order Satisfaction to be made him, for the Damages by him sustained; and for the better Recovery thereof may, in Case there be Occasion, assign such Bond

(r) If a Country Commission, “ at [the Place where the Commission is to be executed in the Country] abovementioned, or within ten Miles of the same, and not within forty Miles of the City of *London*,” must be added here.

(s) Stat. 5 Geo, 2. c. 30. S. 28.

to

to the Bankrupt, who may sue for the same in his own Name.

The petitioning Creditor in a Commission of Bankrupt against *A.* not being able to prove *A.* Bankrupt at the Time the Commission issued, it was superseded; and on a former Day of Petitions, Lord Chancellor (*t*) *Hardwicke*, upon the Application of the Bankrupt, made an Order for assigning the Bond to him, given by the petitioning Creditor to the Great Seal, at the Time of suing out the Commission.

The present Application was to discharge that Order, or at least to suspend any Action upon the Bond, till the Damages sustained by the Bankrupt were inquired into.

The Consideration of the petitioning Creditor's Debt on which he sued out the Commission, was of a very extraordinary Nature, 25 *per Cent.* being charged for Money pretended to be advanced, and fifteen Guineas for a *Premium*, and other Exorbitancies.

Lord Chancellor said, it was in the Breast of the Court, where the Bankruptcy was a doubtful Case, and the Commission superseded, either to direct an Inquiry before a Master of the Damages sustained by the Bankrupt, or a *quantum damnificatus* upon an issue at Law, and after the Damages are settled, the Court might, for the better Recovery thereof, order such Bond to be assigned; but the present Case was attended with such flagrant Circumstances, that he would not by a previous Inquiry into the Damages sustained by the Bankrupt, prevent him from seeking an immediate Satisfaction, and therefore dismissed the Petition.

The Secretary of Bankrupts upon receiving the petitioning Creditor's Affidavit of Debt duly

(*t*) *Atk. Rep.* 144. pl. 83.

sworn,

sworn, and the Bond properly executed by him, will get the Commission sealed, which is always accompanied with the Creditor's Petition.

The Creditor's Petition (u) to the Great Seal for a Commission of Bankrupt.

" To the Right Honourable *Charles Lord Camden*
 " *den Baron of Camden Place in the Coun-*
 " *ty of Kent, Lord High Chancellor of Great*
 " *Britain.*

" IN all humble Manner complaining sheweth
 " unto your Lordship your (*w*) Orator *Charles*
 " *Jones* of, &c. as well for himself as for all
 " other the Creditors of *Francis Gibbons* of, &c.
 " That whereas the said *Francis Gibbons*, using
 " and exercising the Trade of a Merchant by way
 " of Bargaining, Exchange, Bartering, and Che-
 " vyzance, seeking his Trade of living by (*x*)
 " buying and selling, upon just and good Causes,
 " for Wares and Merchandizes to him sold and
 " delivered, and also for ready Money to him
 " lent, being indebted unto your Orator in the
 " Sum of 100*l.* and upwards, of late (that is to
 " say) about the Month of last past, did
 " become Bankrupt, within the several Statutes

(*u*) To be engrossed on a treble six-penny Stamp small Skin of Parchment. See Stat. 5 *W. & M.* c. 21. S. 3, 9 & 10 *W.* 3. c. 25. S. 28. 32 *Geo.* 2. c. 35. S. 1.

(*w*) If the Petition is by two Creditors, it must be thus, " being indebted to your Orators and others his Creditors, in the Sum of 150*l.* and upwards;" if three, " 200*l.* and upwards;" if in Partnership, " to your Orators as Partners."

(*x*) This Form is esteemed so authentic, and so general, that it suits all Bankrupts, and is therefore printed and annexed indiscriminately to every Commission; whereas the Legislature has declared, that Bankers, Brokers, and Factors, are liable to become Bankrupts though they do not *buy and sell*. See the proper Passages of the former Part of this Work,

" made

“ made against Bankrupts, to the Intent to de-
 “ fraud and hinder your said Orator and others
 “ his Creditors, of their just Debts and Duties
 “ to them due and owing, (that is to say) WITH-
 “ IN the Statute made in the Parliament begun
 “ and holden at *Westminster* the *second* Day of
 “ *April* in the *13th* Year of the Reign of *Eliza-*
 “ *beth* late Queen of *England*, concerning Bank-
 “ rupts; and within the Statute made in the
 “ Parliament begun and holden at *Westminster*
 “ aforesaid, the *19th* Day of *March* in the *first*
 “ Year of the Reign of the late King *James* the
 “ *first* of *England*, *France* and *Ireland*, and of *Scot-*
 “ *land* the *seven and thirtieth*, intituled, “ An Act for
 “ the better Relief of Creditors against such as
 “ shall become Bankrupts;” AND ALSO WITHIN
 “ the Statute made in the Parliament begun and
 “ holden at *Westminster* aforesaid the *19th* Day of
 “ *February* in the *one and twentieth* Year of the
 “ Reign of the said late King *James* the *first* of
 “ *England*, *France* and *Ireland*, and of *Scotland* the
 “ *seven and fiftieth*, intituled “ An Act for the
 “ further Description of a Bankrupt and Relief
 “ of Creditors, against such as shall become
 “ Bankrupts, and for inflicting corporal Punish-
 “ ments upon the Bankrupts in some special
 “ Cases:” AND ALSO WITHIN the Statute made
 “ in the *fifth* Year of the Reign of his late Ma-
 “ jesty King *George* the *Second*, intituled, “ An Act
 “ to prevent the committing of Frauds by Bank-
 “ rupts,” or within some or one of them: IN
 “ TENDER CONSIDERATION whereof, MAY IT
 “ PLEASE your Lordship, to grant unto your
 “ Orator, his Majesty’s most gracious Commission,
 “ to be directed to such and so many, wise, honest,
 “ and discreet Persons, as to your Lordship shall
 “ seem meet; authorizing them thereby not only
 “ concerning

" concerning the said Bankrupt, his Body; Lands,
 " Tenements, Freehold, and Customary; Goods,
 " Debts, and other Things whatsoever, but also
 " concerning all other Persons, who by Conceal-
 " ment, Claim, or otherwise, do or shall offend
 " touching the Premises, or any Part thereof,
 " contrary to the true Intent and meaning of the
 " said Statutes. To do and Execute all and every
 " Thing and Things whatsoever, as well for and
 " towards Satisfaction and Payment of the said
 " Creditors, as towards and for all other Intenta
 " and Purposes, according to the Ordinance and
 " Provision of the same Statutes, and of any other
 " Statutes in Force concerning Bankrupts. And
 " your Orator will ever pray, and so forth."

Day of 1767.

" Let (y) a Commission	} Hindley (z) Deputy.
" issue as prayed, and be	
" directed to Thomas Nu-	
" gent, John Fenshawe,	
" Esquires, Champion	
" Branfil, Richard Wood,	
" and Thomas Life, Gen	
" tlemen."	

Camden, C.

Lord (a) Keeper (b) Jeffries held, that he
 could not grant a Commission of Bankrupt *ex*
Officio, but that it must be on Request of Persons
 interested; and that if twenty Men swore before

(y) This is called the *Fiat*.

(z) Deputee Patentee of the Office for the Execution of the Laws
 and Statutes concerning Bankrupts.

(a) Not Lord Chancellor as some have imagined.

(b) 2 Chanc. Cas, 191.

him,

him, that J. S. was Bankrupt, yet without (c) Petition of a Creditor, he could not award a Commission.

A Commission (d) of Bankrupt.

“ George the third, by the Grace of God of
 “ Great Britain, France and Ireland King, De-
 “ fender of the Faith, &c. to our trusty and
 “ well beloved Thomas Nugent, (e) John Fenshaw, Esquires, Champion Bransil, Richard Wood, and
 “ Thomas Life, Gentlemen, Greeting. Whereas
 “ we are informed that Francis Gibbons, of, &c.
 “ using and exercising the Trade of a Merchant
 “ by way of Bargaining, Exchange, Bartering and
 “ Chevisance, seeking his Trade and living, by
 “ buying and (f) selling, about since did
 “ become Bankrupt within the several Statutes
 “ made against Bankrupts, to the Intent to de-
 “ fraud and hinder Charles Jones of, &c. and
 “ others his Creditors of their just Debts and
 “ Duties to them due and owing, we minding
 “ the due Execution as well of the Statute touch-
 “ ing Orders for Bankrupts, made in the Parlia-
 “ ment begun and holden at Westminster the second
 “ Day of April in the thirteenth Year of the Reign
 “ of Elizabeth, late Queen of England, made and
 “ provided, as of the Statute made in the Parlia-

(c) Lord Chancellor Talbot declared, that a Commission of Bankrupt must issue on the Petition of some Creditor who could be relieved under it. *Cas. Temp. Talb.* 243.

(d) To be engrossed on a treble six-penny stamp'd small Skin of Parchment.

(e) If a Country Commission, their Names and Places of Abode are inserted; and the Commissioners are named by the petitioning Creditor.

(f) One of these two must always sit, no other being of the Quorum, as it seemeth. See 3 *Keb. Rep.* 837. pl. 74.

“ ment

"ment begun and holden at *Westminster* aforesaid
 "the *nineteenth* Day of *March* in the *first* Year of
 "the Reign of the late King *James* the *first* of
 "England, France and Ireland, and of Scotland
 "the *seven* and *thirtieth*, intituled, "An Act for
 "better Relief of Creditors against such as shall
 "become Bankrupts:" AND ALSO the Statute
 "made in the Parliament begun and holden at
 "*Westminster* aforesaid, the *nineteenth* Day of
 "*February* in the *one* and *twentieth* Year of the
 "Reign of the said late King *James* the *first*, of
 "England, France and Ireland, and of Scotland the
 "seven and *fiftieth*, intituled, "An Act for the
 "further Description of a Bankrupt, and Reliet
 "of Creditors against such as shall become Bank
 "rupts, and for inflicting corporal Punishments
 "upon the Bankrupts in some special Cases. AND
 "Also of the Statute made in the *fifth* Year of the
 "Reign of his late Majesty King *George* the
 "*second*, intituled, "An Act to prevent the com-
 "mitting of Frauds by Bankrupts." UPON TRUST
 "of the Wisdom, Fidelity, Diligence and provi-
 "dent Circumspection which we have conceived
 "in you, do by these Presents name, assign, ap-
 "point, constitute and ordain you our special
 "Commissioners, HEREBY giving full Power and
 "Authority unto you, four or three of you,
 "whereof you the said *Thomas Nugent*, and *John*
 "*Fenshawe*, to be (g) one, to proceed according
 "to the said Statutes, and all other Statutes in
 "Force concerning Bankrupts, not only concern-
 "ing the said Bankrupt, his Body, Lands, Tene-
 "ments, Freehold and Customary, Goods, Debts,

(g) It seems therefore that the three last Commissioners in the
 Lists, are not qualified by Law to sit together on any Commission,
 because neither of them is, *quorum unus*; we fear this has not been
 attended to. See 3 *Keb. Rep.* 837, pl. 74.

" and

“and other Things whatsoever, but also concerning all other Persons, who by Concealment, Claim, or otherwise, do, or shall offend, touching the Premises, or any Part thereof, contrary to the true Intent and Meaning of the same Statutes; AND TO DO AND execute all and every Thing and Things whatsoever, as well for and towards Satisfaction and Payment of the said Creditors, as towards and for all other Intents and Purposes, according to the Ordinance and Provision of the same Statutes, WILLING and commanding you, four, or three of you, whereof you the said *Thomas Nugent* and *Thomas Fensbawe* to be one, to proceed to the Execution and Accomplishment of this our Commission, according to the true Intent and Meaning of the same Statutes, with all Diligence and Effect. WITNESS (b) our Self at *Westminster* the Day of in the *seventh* Year of our Reign.”

J. (i) *Yorke*.

Lord Keeper *Jeffryes* (k) held, that the granting of a Commission of Bankrupt was not a Matter discretionary in him, but that he was bound to do it *de Jure*; and that though the Words in the Act of Parliament were, that the Chancellor may grant a Commission, yet that (may) was in Effect, as if it had been (must), shall grant, or ought to grant; and that it had been so resolved by all the Judges.

Lord Chancellor (l) *Talbot* declared, that Nobody but a Creditor could take out a Commission

(b) If the King is abroad, it is tested in the Name of the Queen Regent, or of the Lords Justices.

(i) Patentee for executing the Laws and Statutes concerning Bankrupts.

(k) *Vern.* 153. 2 Ch. Caf. 191.

(l) Caf. Temp. *Talb.* 243.

against

against another, for, that the Acts of Parliament were all made for the Relief of Creditors.

The Practicer having the Commission (or indeed before for Expedition) is to order one of the Messengers to (m) summon three of the Commissioners to whom the Commission is directed, to attend at such Time and Place (usually a Coffee House) as suits the Commissioners, the Solicitor, and the Parties, in order to open the Commission.

The Commissioners consist of sixty Esquires and Gentlemen divided into twelve Lists, two of each List must be of the *Quorum*, and one of them ought always to sit; the Names of those Gentlemen, who at present have the Honor of being in the Commission, are as follow:

1st List.

Thomas Nugent, Esq.
John Fenshaw, Esq.
Champion Bransil, Esq.
Richard Wood, Gent.
Thomas Lise, Gent.

2d List.

Thomas Lane, Esq.
Henry Clive, Esq.
John Crofts, Esq.
Thomas Heckford, Gent.
Augustine Greenland, Gent.

3d List.

John Bennett, Esq.
Robert Farwett, Esq.
Thomas Mulso, Esq.
William Strong, Gent.
George Hill, Gent.

4th List.

John Cookson, Esq.
Richard Heron, Esq.
Harry Harmood, Gent.
Thomas Lloyd, Gent.
John Skirrow, Gent.

5th List.

William Melmoth, Esq.
John Seare, Esq.
Francis Munday, Esq.
Henry Barnes, Gent.
Anthony Pye, Gent.

6th List.

Jacob Reynardson, Esq.
Charles Robinson, Esq.
Robert Henshaw, Esq.
Francis Duroure, Gent.
John Maidman, Gent.

(m) This Right of summoning seems not at all settled, for it is claimed by the Commissioners, by the Clerks to Commissions, and by the Messengers.

7th List.	10th List.
Thomas Hotchkin, Esq.	Charles Nelson Cole, Esq.
William Dent, Esq.	Francis Filmer, Esq.
William Bumpstead, Esq.	Christopher Lofft, Esq.
John Vernon, Gent.	William Crawley, Gent.
Robert Austin, Gent.	William Cooke, Gent.
8th List.	11th List.
Thomas Burrell, Esq.	William Rookes, Esq.
John Skynner, Esq.	Spencer Schutz, Esq.
John Whitehead, Gent.	Beaumont Hotham, Esq.
Elborough Woodcock, Gent.	Richard Maddock, Gent.
John Pye, Gent.	Joseph Baldwin, Gent.
9th List.	12th List.
Isaac Strutt, Esq.	Francis Warden, Esq.
James Mansfield, Esq.	Stephen Soame, Esq.
William Morgan, Gent.	Arthur Murphy, Esq.
John Lancaster, Gent.	John Rayner, Jun. Gent.
Richard Hargrave, Gent.	Christopher Cowper, Gent.

The Names and Offices of the Messengers to the Commissioners of Bankrupts.

- William Chessbyre* ; Corner of the Roll's Yard,
Chancery Lane.
- David Caddell* ; near the Crown and Roll's
Tavern, Chancery Lane.
- Noel Rogers* ; opposite Symmond's Inn, Chancery
Lane.
- Robert Money* ; opposite Symmond's Inn, Chancery
Lane.
- George Surridge* ; No. 10. Symond's Inn.
- John Parke*, Symond's Inn.

Previous to the Meeting of the Commissioners, it will be necessary for the practising Solicitor to be furnished with a proper Deposition of the Party's being a Trader, and of his having committed an Act of Bankruptcy ; and also of the petitioning

petitioning Creditor's Debt; and to get the Witnesses who are to prove the Trading, the Act of Bankruptcy, and the Debt, to attend the said Meeting, but if the petitioning Creditor cannot attend, or lives in the Country, a Copy of his Affidavit must be taken at the Bankrupt Office, and (n) exhibited to the Commissioners.

Presuming now that the Practicer is supplied with whatever is necessary for him to give in Evidence at the first Meeting, we will proceed to inform him of his, and the Commissioners Duty, and Business at that Meeting.

First Meeting.

At this Meeting, which is called a private one, the Commissioners who attend, first of all qualify themselves, by administering to each other the following (o) Oath, uncovered.

" I *Thomas Nugent* do swear that I will faithfully, impartially, and honestly, according to
 " to the best of my Skill and Knowledge, execute
 " the several Powers and Trusts reposed in me
 " as a Commissioner, in a Commission of Bank-
 " rupt against *Francis Gibbons*, of &c. and that
 " without Favor or Affection, Prejudice, or
 " Malice.
 " So help me God."

(n) That is, you must underwrite the Affidavit thus ;

At, &c.

Day of *June* 1767.

Exhibited to us under the Commission of Bankrupt against
Francis Gibbons.

Thomas Nugent.

John Fenshawe.

Champion Bransil.

(o) Which Oath any two of the Commissioners are by Stat.
 5 Geo. 2. c. 30. S. 44. empowered to administer to each other.

First Meeting.

A Memorial of this Oath is to be signed by the Commissioners, (and is usually witnessed by the Clerk to the Commission) and kept among the Proceedings under the Commission.

These Proceedings should be wrote fair, large, and wide, (to give Room for Amendments and Interlineations) on brief Paper, with a Quarter Margin, for the Commissioners to set (*p*) their Names upon, (after they have been signed by and sworn to by the Parties) beginning a fresh Sheet at each Date or new Proceeding, except the Depositions (*q*) of Creditors Debts, three of which may be wrote on one Sheet; (*r*) they are to be annexed to each other, and covered with Parchment or Cartridge Paper, upon which are to be indorsed, the three Sitzings at *Guildhall*, as the Commissioners always appoint them at this Meeting.

The Preamble or Title to the Proceedings.

“ Proceedings, Examinations, and Depositions
 “ had and taken at *Serle's Coffee-house, Lin-*
 “ *coln's Inn* in the County of *Middlesex*, this
 “ Day of *June*, in the Year of our
 “ Lord 1767, under and by Virtue of his
 “ Majesty's Commission of Bankrupt awarded
 “ and issued against FRANCIS GIBBONS of &c.
 “ directed to us *Thomas Nugent, John Fen-*
 “ *shawe, Esquires, Champion Branfil, Gentle-*

(*p*) The Commissioners sign them at the Foot, if it be their own Act, as taking the Oaths, declaring Party Bankrupt, &c. If it be the Act of a third Person, as the Deposition of the Trading, Act of Bankruptcy, of a Debt, &c. the first signs at the Top of the Margin, the second in the Middle, and the third at Bottom.

(*q*) These are never on Stamps.

r, Number them at the Bottom, and so do all Proceedings.

“ man,

“ man, together with *Richard Wood*, and
 “ *Thomas Life*, Gentlemen, in the said Com-
 “ mission named, which said Commission is
 “ dated at *Westminster*, the Day of
 “ *June*, in the seventh Year of the Reign of
 “ our Sovereign Lord *George the Third*, by
 “ the Grace of God, of *Great Britain, France*
 “ and *Ireland*, King, Defender of the Faith,
 “ and so forth; and in the said Year of our
 “ Lord 1767.”

Indorse on this Preamble, that the Commis-
 sioners have appointed the 5th and 15th of *July*,
 and Day of *August* next, to be Days of
 sitting, and have ordered that they be so put in
 the *Gazette*.

*Memorial of the Qualification of the Com-
 missioners.*

“ Memorandum, that we *Thomas Nugent, John*
 “ *Fenshawe*, Esquires, and *Champion Branfil*, Gen-
 “ tleman, being the major Part of the Commis-
 “ sioners named and authorized in and by a Com-
 “ mission of Bankrupt awarded and issued against
 “ *Francis Gibbons*, of &c. did administer to each
 “ other, and severally take the Oath appointed
 “ to be taken by Commissioners of Bankrupts,
 “ prescribed and specified in and by an Act of
 “ Parliament made in the *fifth* Year of the Reign
 “ of his late Majesty King *George the Second*,
 “ intituled, “ An Act to prevent the committing
 “ of Frauds by Bankrupts,” before we proceeded
 “ to act in the Execution of the said Commission,
 “ according to the Directions of the said Act.”

Witness.

James Browne,
 [Clerk to the Commission.]

Thomas Nugent,
John Fenshawe,
Champion Branfil,
 Oath

Oath to be administered by the Commissioners uncovered, to the Witnesses, upon their Examination.

“ You are here produced as Witnesses by
 “ Virtue of a Commission out of the High Court
 “ of Chancery, to us, and others directed, to be
 “ by us examined concerning the Bankruptcy of
 “ Francis Gibbons of, &c. Now to all (s) such
 “ Questions and Interrogatories as shall be asked
 “ you by Virtue of this Commission of Bankrupt,
 “ concerning the said Francis Gibbons, his Trade
 “ or Profession, his absconding, and other Acts
 “ which he hath done or suffered, by which he
 “ may be discovered to be Bankrupt; and also
 “ concerning his Lands and Tenements, Goods
 “ and Chattels, Debts and Duties, Frauds and
 “ Concealments, and other Matters and Things
 “ in Obedience to the said Commission, and pur-
 “ suant to the several Statutes made concerning
 “ Bankrupts, you and (t) every of you shall true
 “ and direct Answer make, and (u) swear the
 “ Truth, the whole Truth, and Nothing but the
 “ Truth.” “ So (u) help you God.”

If the petitioning Creditor attends, let him
 sign and swear (as all Witnesses and Creditors
 must do) the Deposition or Proof of his Debt.

(s) Viz. Whether the Contents of the Deposition are true on
 the Oath taken? and whether the Name subscribed thereto is of
 the Examinant's own proper Hand Writing.

(t) If two only, each, it is usual to swear three at a Time.

(u) If the Witness happens to be a Quaker, then instead of
 swear, say, “ you shall solemnly, sincerely, and truly declare and
 affirm.” See Stat. & Geo. c. 6. S. 1. and omit the Words “ So
 help you God.”

Oath

Oath for proving a Debt.

" You shall swear that *Francis Gibbons* of. &c.
 " at the Time of his becoming Bankrupt, was
 " justly and *bonâ Fide* indebted to you, in the
 " Sum of _____ and that you have not since been
 " any ways paid or satisfied for the same, or any
 " Part thereof" " *So help you God.*"

Be sure to inquire whether the Debt was contracted while the Bankrupt was in Trade.

Deposition of the petitioning Creditor's Debt.

At, &c.

Thomas Nugent. " *Charles Jones* of *High Hol-*
 " born in the County of *Middle-*
 " *sex* *Mercer*, being sworn and examined, the
 " Day and Year, and at the Place abovesaid,
 " upon his Oath saith, that *Francis Gibbons* of,
 " &c. the Person against whom the Commis-
 " sion of Bankrupt now in Prosecution, is
 " awarded and issued, was be-
John Fenshawe. " fore the Date and suing forth
 " of the said Commission, and
 " still is justly and truly indebted unto him
 " this Examinant in the Sum of 300*l.* for Goods
 " sold and delivered by this Examinant to the
 " said *Francis Gibbons*, for which said Sum of
 " 300*l.* or any Part thereof, this Examinant
 " hath not received any Secu-
Champion Branfil. " rity or Satisfaction whatso-
 " ever." *Charles Jones.*

For a Deposition of Trading and Act of Bank-
 ruptcy we refer to Fol. 262. 267.

If you cannot prevail on the Witnesses who are to prove the Trading or Act of Bankruptcy to attend, you must prepare a Summonce to them from the Commissioners for that Purpose.

Summonce to compel a Person to attend, who refused, to be examined on a Commission.

“ By Virtue of a Commission of Bankrupt
 “ awarded and issued against *Francis Gibbons* of,
 “ &c. you and every of you, to whom this our
 “ Summonce is directed, are hereby commanded
 “ and required, personally to be and appear be-
 “ fore us, whose Names are hereunto subscribed,
 “ or the major Part of the Commissioners, in the
 “ said Commission named and authorized, on Sight
 “ hereof, at *Serle's Coffee-House Lincolns-Inn* at six
 “ o'Clock this Evening, then and there to be ex-
 “ amined, by Virtue of the said Commission, and
 “ the several Statutes therein mentioned; and
 “ hereof you are not to fail at your Peril. Given
 “ under our Hands this Day of *June 1767.*”

To be here directed
 to the Witnesses.

Thomas Nugent.
John Fenshaw.
Champion Branfil.

A true and examined Copy of the above Summonce must be personally delivered to the Witnesses respectively by the Messenger, or left by him at their respective Lodgings or at their last and usual Places of Abode; if the Witnesses do not attend, upon being duly served, the Commissioners (on Oath being made before them of the Service) will execute a Warrant for their Commitment.

Warrant

Warrant to apprehend and commit a Person to Gaol, who refused to attend to be examined, upon having been duly summoned.

“ WHEREAS his Majesty’s Commission under
 “ the Great Seal of Great Britain bearing date
 “ the Day of June last past at *Westminster*,
 “ grounded on the several Statutes made and
 “ now in Force concerning Bankrupts, hath
 “ been awarded and issued against *Francis Gibbons*
 “ of, &c. directed to us who have hereunto sub-
 “ scribed our Names, and set our Seals, and to
 “ *Richard Wood*, and *Thomas Eise*, Gentlemen, and
 “ we being the major Part of the Commissioners
 “ therein named, (one whereof is of the (w) Quo-
 “ rum) having begun to put the said Commission
 “ into Execution, and it appearing to us that the
 “ Act of Bankruptcy intended to be proved against
 “ the said *Francis Gibbons*, is his lying in Prison
 “ two Months upon an Arrest for Debt; and
 “ that *J. W.* Officer to the Sheriff of *Middlesex*
 “ was the Person who arrested the said *Francis*
 “ *Gibbons* on which Arrest the said *Francis Gibbons*
 “ lay in Prison two Months as aforesaid; and
 “ that the said *J. W.* was duly summoned to ap-
 “ pear before us, but hath made Default, in Con-
 “ tempt of our Authority, and of the Statutes,
 “ and also of the Commission aforesaid, and the
 “ Authority thereby to us given; These are there-
 “ fore to will, require and authorize you, and
 “ every of you, immediately upon Receipt hereof,
 “ to apprehend, arrest and take into your Custody
 “ the Body of the said *J. W.* and him safely to
 “ convey to His Majesty’s Gaol of *Newgate*, and

(w) See fol. 287. Note (g)

"him there to deliver to the Keeper of the said
 "Gaol, who is hereby required and authorized by
 "Virtue of the said Commission, and Statutes
 "aforesaid, to receive the said *J. W.* into his Cus-
 "tody, and him safely to keep and detain without
 "Bail or Mainprize, untill he shall submit him-
 "self to be examined according to the true Intent
 "of the Statutes, and be thence delivered by due
 "Course of Law, and for your so doing, this
 "shall be your sufficient Warrant, given under
 "our Hands and Seals the Day of June in
 "the Year of our Lord 1767."

To *William Chesshyre*

our Messenger, or

Robert Brown his As-

sistant, and to *Rich-*

ard *Akerman*, Keep-

er of His Majesty's

Gaol of *Newgate*, or

to his Deputy there.

Thomas Nugent. (L. S.)

John Fenshawe. (L. S.)

Champion Branfil. (L. S.)

Warrant to commit a Witness who refused to sign
his Examination.

"WHEREAS a Commission of Bankrupt, un-
 "der the Great Seal of Great Britain, bearing
 "Date at *Westminster* the Day of June In-
 "stant, grounded upon the several Statutes made
 "and now in Force concerning Bankrupts,
 "hath been awarded and issued against *Francis*
 "*Gibbons* of, &c. directed unto *Thomas Nugent*,
 "and *John Fenshawe*, Esquires, and to *Champion*
 "*Branfil*, *Richard Wood*, and *Thomas Life*, Gentle-
 "men, thereby giving full Power and Authority
 "to the said Commissioners, four or three of them,
 "to proceed according to the several Statutes
 "made

" made and now in Force concerning Bankrupts.
 " AND WHEREAS *David Stone* of *London* Mer-
 " chant, was on the Day of *June* Instant,
 " present at a Meeting before us whose Hands and
 " Seals are hereunto subscribed and set, being the
 " major Part of the Commissioners named and
 " authorized in and by the said Commission; and
 " the said *David Stone* being (x) sworn and
 " examined by us, the major Part of the said Com-
 " missioners in the said Commission named, touch-
 " ing the Trade and Dealings of the said *Francis*
 " *Gibbons*, and also concerning several Acts of
 " Bankruptcy supposed to be committed by the
 " said *Francis Gibbons*, which Examination of the
 " said *David Stone* was reduced and taken down
 " in writing, and such writing was read over to
 " him (and to the wording of which said Exami-
 " nation, the said *David Stone* declared he had no
 " reasonable Objection) notwithstanding which,
 " the said *David Stone* refused to sign or subscribe
 " such Examination, so reduced and taken down
 " in Writing, as aforesaid, though often required
 " by us so to do; We therefore whose Hands and
 " Seals are hereunto subscribed and set, being the
 " major Part of the Commissioners in the said Com-

(x) If the Commitment be for refusing to be sworn, and
 to answer Interrogatories, the Warrant runs thus; " AND
 WHEREAS *J. S.* was suspected to have embezzled, con-
 cealed, and secretly disposed of a great Part of the Goods and
 Estate of the said *Francis Gibbons*, and was duly summoned to ap-
 pear before us, who made Default in Contempt of our Authority,
 but at length came and appeared before us, we then sitting in the
 Execution of the said Commission, did obstinately refuse to be
 sworn, though often required by us so to be, and also obstinately
 refused to make answer to such Interrogatories and Questions as we,
 by Virtue of the said Commission, required him to answer unto,
 concerning the said *Francis Gibbons* and his Estate, according to the
 true Meaning of the said Statutes, for the discovering the Estate of
 the said *Francis Gibbons* in Contempt of the said Statutes, and of the
 Commission aforesaid, and the Authority thereby to us given;
 We therefore, &c. [See fol. 202.]

" mission

“ mission named, do hereby will, require and au-
 “ thorize you, immediately to take into your
 “ Custody the Body of the said *David Stone* and
 “ him safely to convey to his Majesty’s Prison of
 “ the *Fleet*, and him there to deliver to the War-
 “ den of the said Prison, who is hereby required
 “ and authorized to receive the Body of the said
 “ *David Stone* into his Custody, and him safely to
 “ detain, without Bail or Mainprize, until he
 “ shall submit himself to the Commissioners in
 “ the said Commission named, or the major Part
 “ of them; and shall sign or subscribe the Ex-
 “ amination aforesaid, according to the true In-
 “ tent and Meaning of the said Statutes in the
 “ said Commission named, or be otherwise de-
 “ livered by due Course of Law, for which this
 “ shall be a sufficient Warrant. Given under
 “ our Hands and Seals, this Day of June
 “ 1767.”

To *William Chesbire* *Thomas Nugent.* (L. S.)
 our Messenger, &c. *John Fenshawe.* (L. S.)
 [as before.] *Champion Branfil.* (L. S.)

Declaration of the Commissioners that they have
 found the Party Bankrupt.

“ Memorandum, that we, whose Names are
 “ hereunto subscribed, (or underwritten) being
 “ the major Part of the Commissioners named and
 “ authorized, in and by a Commission of Bank-
 “ rupt, awarded and issued against *Francis Gibbons*
 “ of, &c. having met the Day and Year, and at
 “ the Place abovementioned, and having pro-
 “ ceeded to act in the Execution of the said
 “ Commission, have, upon good Proof, upon
 “ Oath, before us had, and taken, found, that
 “ the

First Meeting.

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“ the said *Francis Gibbons* did (y), before the Date
 “ and issuing forth of the said Commission be-
 “ come Bankrupt, within the true Intent and
 “ Meaning of the several Statutes made, and now
 “ in Force, concerning Bankrupts, some or one
 “ of them; We do therefore hereby adjudge and
 “ declare him Bankrupt accordingly.”

Thomas Nugent.

John Fenshaw.

Champion Bransl.

As soon as the Commissioners have declared the
 Party Bankrupt, they execute a Warrant for
 seizing his Effects, and sign a Summance for him
 to surrender.

Warrant of Seizure.

Thomas (L. S.) Nugent. “ WHEREAS his Ma-
 “ jesty's Commission, un-
 “ der the Great Seal of Great Britain, bearing
 “ Date at *Westminster* the Day of June
 “ last past, grounded upon the several Statutes
 “ made concerning Bankrupts, hath been awarded

(y) Lord Chancellor *Talbot* said, that the general Rule was not
 to determine the Time of the Bankruptcy, but only that the Per-
 son was Bankrupt antecedent to the Commission; for then all the
 Creditors before that Time would have a Right to come in; but
 when that Matter was minutely entered into, that it must be di-
 stinguished which Creditors were precedent, and which were sub-
 sequent to the Act of Bankruptcy. *Cas. Temp. Talb.* 243. 244.
 See fol. 6. Note (g). The Commissioners are generally cautious
 in declaring the Bankruptcy from a certain Time, but leave it to a
 Trial at Law, in Case there be any Question or Doubt of it; and
 this is to secure themselves from Actions that may be brought against
 them. *Beauvis's Lex mercat. rediviv.* 494. And it is also observ-
 able, that the Declaration of the Commissioners, whether he be
 Bankrupt or not, doth not acquit or charge him unless in Truth it
 were so. 2 *Sid.* 176. *T. Raym.* 377. 2 *Chan. Cas.* 153. *Good.*
 36. 37.

“ and

“ and issued against *Francis Gibbons*, of &c. di-
 “ rected unto us, who have hereunto subscribed
 “ our Names, and set our Seals: who have also
 “ respectively taken the Oath appointed by an
 “ Act of Parliament, passed in the *fifth* Year of
 “ his *late* Majesty's Reign, intituled, “ An Act
 “ to prevent the committing of Frauds by Bank-
 “ rupts,” for Commissioners of Bankrupts to take
 “ before they act as Commissioners, in the Exe-
 “ cution of the Powers or Authorities, given and
 “ granted, by the said Act, or Acts of Parliament
 “ now in Force, concerning Bankrupts, and to
 “ *Richard Wood* and *Thomas Life*, Gentlemen,
 “ being the major Part of the Commissioners,
 “ named to execute the said Commission; And it
 “ having appeared to us the major Part of the said
 “ Commissioners, in the said Commission named
 “ and authorized, upon good and sufficient Proof,
 “ upon Oath, that the said *Francis Gibbons* hath,
 “ from the Month of 17 carried on
 “ the Trade and Business of a Merchant in his
 “ House in aforesaid, by buying
 “ and selling Linnens, Lace, and other Wares
 “ and Merchandizes, and by exporting and im-
 “ porting divers and sundry Kind of Goods, and
 “ hath thereby sought, and endeavoured to get
 “ his Living, as other Merchants usually do;
 “ and in the Course of his
John (L. S.) Fenshawe. “ said trading and dealing
 “ he became indebted unto
 “ *Charles Jones*, of &c. in the Sum of 100*l.* and
 “ upwards, for Goods sold and delivered, and
 “ we also have found upon good Proof, upon
 “ Oath, that the said *Francis Gibbons* did, before
 “ the Date and suing forth of the said Commis-
 “ sion, become Bankrupt, within the true Intent
 “ and Meaning of the several Statutes made, and
 “ now

" now in Force concerning Bankrupts, some, or
 " one of them; and we have adjudged and declared
 " him Bankrupt accordingly: These are therefore,
 " by Virtue of the said Commission, and the se-
 " veral Statutes therein mentioned, to will and
 " require, authorize and impower you, and every
 " of you, to whom this our Warrant is directed,
 " forthwith to enter into and open the House and
 " Houses of him the said *Francis Gibbons*, and also
 " into all other Place and Places belonging to him
 " the said *Francis Gibbons*, where any of his Goods
 " are, or are suspected to be, and there seize all
 " the ready Money, Jewels, Plate, Household
 " Stuff, Goods, Merchandizes, Books of Account,
 " and all other Things whatsoever, belonging to
 " him the said *Francis Gibbons*. And such Things
 " as you shall so seize, you shall cause to be in-
 " ventoried, and appraised by honest Men of
 " Skill and Judgement, and the same you shall
 " return to us with all convenient Speed; and
 " what you shall so seize, you shall safely detain
 " and keep in your Possession, until we shall give
 " you Order for the Disposal thereof; and in case
 " of Resistance, or of not having the Key or
 " Keys of any Door or Lock belonging to any
 " Place or Places of him the said *Francis Gibbons*,
 " where any of his Goods are, or are suspected
 " to be, you shall break open, or cause the same
 " to be broken open, for the better Execution of
 " this our Warrant. Given under our Hands and
 " Seals this Day of in the Year of
 " our Lord 1767."

To *William Chesbrey*, our Messenger, and to all
 Mayors, Bailiffs, Constables, Headboroughs,
 and all other his Majesty's loving Subjects,
 whom we require to be aiding and assisting in
 the Execution of this our Warrant, as Occa-
 sion shall require.

Champion (L. S.) Branfil.

Summonce

Summonce to the Bankrupt to surrender.

" WHEREAS a Commission of Bankrupt on the
 " Day of now last past, issued
 " under the Great Seal of *Great Britain* against
 " you *Francis Gibbons*, by the Name and Descrip-
 " tion of *Francis Gibbons*, of &c. AND WHEREAS
 " the major Part of the Commissioners in and by
 " the said Commission named and authorized, have
 " declared you to be Bankrupt; We the said
 " Commissioners do hereby summonce and require
 " you the said *Francis Gibbons* personally to be and
 " appear before the Commissioners in the said
 " Commission named, or the major Part of them,
 " on (z) the Day of Instant, at *ten*
 " in the Morning, and on the and Days
 " of next, at *four o'Clock* in the After-
 " noon, at *Guildhall, London*, then and there to
 " be examined, and to make a full and true Dis-
 " covery and Disclosure of, all your Estate and
 " Effects, according to the Directions of the sever-
 " al Statutes made, and now in Force concerning
 " Bankrupts, and particularly the Statute passed
 " in the *fifth* Year of the Reign of his late Ma-
 " jesty King *George the Second*, intituled, " An Act
 " to prevent the committing of Frauds by Bank-
 " rupts;" and herein you are not to fail at your
 " Peril. Given under our Hands this Day
 " of 17 "

To *Francis Gibbons*,
 the Bankrupt.

Thomas Nugent.
John Fenshawe.
Champion-Branfil.

(z) According to the Days fixed by the Commissioners in the *Gaz. etc.*

As

As soon as the Warrant of Seizure is executed, and the Bankrupt has received his Summons from the Commissioners, he ought in Prudence to surrender (a) himself at their first Sitting, as well to shew his Willingness of complying with the Commission, as to secure himself from Arrest and Imprisonment, till the Time of his last Examination, whether within the forty two Days or the further Time allowed him by the Act (b) of Parliament, for finishing the same, being forty (c) nine Days, though his appearing at the first Sitting is not absolutely necessary; yet sometimes he surrenders himself even at this first Meeting, for the Sake of being protected.

Memorandum of the Bankrupt's surrendering himself.

At, &c.

Thomas Nugent. “Memorandum; that Francis Gibbons of, &c. the Person against whom the Commission of Bankrupt now in Prosecution, is awarded and issued, did, the Day and Year, and at the Place abovementioned voluntarily come and surrender himself to us the major Part of the Commissioners named and authorized in and by the said Commission, and submitted himself to be examined, and in

(a) It hath been said, if a Bankrupt surrenders, against whom an injurious Commission has been taken out, that such Surrender precludes him from taking any Remedy he might otherwise have been entitled to, against the petitioning Creditor; but we apprehend it does not.

(b) Stat. 5 Geo. 2. c. 30. S. 6.

(c) The Statute says fifty Days, but the Lord Chancellor's Order is for forty nine Days, because the fiftieth Day may happen to fall on a Sunday.

“ all

“ all Things to conform himself to the Directions
 “ of the several Statutes made and now in Force
 “ concerning Bankrupts, and particularly to the
 “ Statute made in the *fifth* Year
John Fenshawe. “ of the Reign of his late Ma-
 “ jesty King *George the Second,*
 “ intituled, “ An Act to prevent the committing
 “ of Frauds by Bankrupts,” in order to have the
 “ Benefit of the said Act.

“ And the said *Francis Gibbons* being sworn and
 “ examined the Day and Year abovesaid, upon
 “ his Oath saith, that he is not at present pre-
 “ pared to make a full Disclosure and Discovery
 “ of his Estate and Effects, but prays further
 “ Time for doing the same to the next Sitting,
 “ which is hereby granted him
Champion Branfil. “ accordingly.”

Francis Gibbons.

If the Bankrupt surrenders himself at this meet-
 ing, the Commissioners indorse the following
Memorandum, on his Summance to surrender; by
 this he will be indisputably protected.

At, &c.

“ *Memorandum*, That the within named *Francis*
 “ *Gibbons*, the Day and Year, and at the Place
 “ abovementioned surrendered to us whose Names
 “ are hereunto subscribed being the major Part of
 “ the Commissioners named and authorized in
 “ and by a Commission of Bankrupt awarded and
 “ issued, and now in Prosecution, against the said
 “ *Francis Gibbons*, and submitted himself to be
 “ examined from Time to Time touching his
 “ Estate and Effects, and declared upon Oath,
 “ that he was not prepared to make a full Dis-
 “ closure and Discovery, and prayed further Time
 “ for

“for that Purpose, which was granted to him accordingly.”

Thomas Nugent.

John Fenshawe.

Champion Branfil.

The Bankrupt having (*d*) surrendered shall be free from Arrest by his (*e*) Creditors, in coming to surrender, and from his actual Surrender to the Commissioners, for the forty two Days or such further Time as shall be allowed him for finishing his Examination, provided he was not in Custody at the Time of his Surrender, and Submission, to be examined.

From the following Case it appears, that the Bankrupt will be free from Arrest by his Creditors, from the Notice in the *Gazette*, to the first Sitting, though he has not *actually* surrendered to the Commissioners, if he does not misbehave himself in the intermediate Time.

A Commission of Bankrupt issued against *Philips de Fries* in the Month of *July 1732*, and he was declared Bankrupt, and required to surrender himself to the Commissioners: and when the Messenger executed the Warrant of Seizure, the Bankrupt, without Resistance, delivered up his Keys and Effects to him, and promised to submit to the Commissioners, and comply with the Directions of the Act.

The Summance was not served upon him till the first Day mentioned for his Surrender in the *Gazette* (and three Days after executing the Warrant of Seizure) and about an Hour after Service of the Summance, and before he surrendered him-

(*d*) Stat. 5 Geo. 2. c. 30. S. 5.

(*e*) Lord *Hardwicke* said that *Bail* were not Creditors within the Clause, *Atk. Rep.* 238. pl. 130.

self,

self, he was arrested, and thereupon he petitioned the Lord Chancellor, amongst other Things, to be discharged: and the Petition came on to be heard before he had surrendered himself; and upon the Hearing, Lord Chancellor (f) King so far considered what he had (and which was all that he could then do) as a Compliance with the Act, that he held he ought to be discharged, but dissuaded the Bankrupt from suing the Officer for the Penalty; and thereupon an Order was made accordingly by Consent.

If the Bankrupt shall be arrested for Debt, or on any Escape Warrant, coming to surrender, or after his surrender, within the Time above-mentioned; then, on producing the Summons or Notice under the Hands of the Commissioners or Assignees, and giving the Officer a Copy thereof, he shall be discharged; and in case any Officer shall detain him, he (g) shall forfeit to the Bankrupt, for his own Use, 5*l.* for every Day he shall detain him.

In Case the Bankrupt happens to be in Prison at the Time of his being declared Bankrupt, and the petitioning Creditor proves his Debt at this Meeting, and is desirous of seeing such Bankrupt Prisoner, the Commissioners will give him a Certificate of his having proved his Debt, in Pursuance of the (h) Statute.

The Certificate.

“ We whose Names are hereunto subscribed,
 “ being the major Part of the Commissioners
 “ named and authorized in and by a Commission

(f) *Beawes's Lex mercat. rediviv.* 496.

(g) Stat. 5 Geo. 2. c. 30. S. 5.

(h) Stat. 5 Geo. 2. c. 30. S. 19.

" of Bankrupt awarded and issued, and now in
 " Prosecution against *Francis Gibbons* of, &c. do
 " hereby certify that *Charles Jones* of, &c. hath
 " proved his Debt under the said Commission.
 " Witness our Hands this Day of June, in
 " the Year of our Lord 1767.

Witness [Clerk to
 the Commission]

Thomas Nugent.
John Fenshawe.
Champion Branfil.

**Certificate for a Judge or Justice of Peace to grant
 his Warrant for apprehending and committing a
 Bankrupt.**

" We whose Names are hereunto subscribed,
 " and Seals (i) set, being the major Part of the
 " Commissioners named and authorized in and by
 " a Commission of Bankrupt awarded and issued
 " against *Francis Gibbons* of, &c. do hereby certify
 " that a Commission of Bankrupt is issued and
 " now in Prosecution against the said *Francis*
 " *Gibbons*, and that the said *Francis Gibbons* hath
 " been proved before us to become Bankrupt,
 " within the true Intent and Meaning of the
 " Statutes made and now in Form concerning
 " Bankrupts, some or one of them, before the
 " Date and suing forth of the said Commission.
 " Witness our Hands and Seals at *Serle's Coffee*
 " *House, Lincoln's Inn*, in the County of *Middlesex*
 " this Day of June in the Year of our
 " Lord 1767."

Thomas Nugent. (L. S.)
John Fenshawe. (L. S.)
Champion Branfil. (L. S.)

(i) See Stat. 5 Geo. 2. c. 30. S. 14.

If there is any Reason to apprehend that an Extent may issue at the Suit of the Crown against the Bankrupt's Effects, it will be proper to have a provisional Assignment executed at this Meeting, which will entirely defeat such Extent.

Provisional (k) Assignment.

" THIS INDENTURE made the Day of
 " June in the seventh Year of the Reign of our
 " Sovereign Lord George the Third by the Grace
 " of God, of Great Britain, France and Ireland,
 " King, Defender of the Faith and so forth, and
 " in the Year of our Lord 1767. BETWEEN Tho-
 " mas Nugent, and John Fenshawe, Esquires, and
 " Champion Bransil, Gentleman, the major Part of
 " the Commissioners named and authorized, in
 " and by a Commission of Bankrupt, awarded and
 " issued against Francis Gibbons of, &c. of the one
 " Part; and William Chesshyre of, &c. Gentle-
 " man, of the other Part.

" [Then recite, the issuing of the Commission; the
 " Qualification of the Commissioners; that the Party
 " traded; that he became indebted to the petitioning
 " Creditor; that he became Bankrupt, and that he
 " was so adjudged and declared. For these Recitals
 " see " WARRANT of SEIZURE." Fol. 301.]

" AND WHEREAS the said Commissioners, Par-
 " ties to these Presents, in further Execution of
 " the said Commission, and of the Statutes there-
 " in mentioned, have also found out and discover-
 " ed, or it otherwise appeared to them, that the
 " said Francis Gibbons at the time he became Bank-
 " rupt, as aforesaid, or afterwards, was possessed

(k) This is to be engrossed two Parts on half Crown stamp'd
 Skins of Parchment,

" of,

“ of, interested in, or well intituled unto sundry
 “ Goods, Wares, Chattels, Merchandizes, Stock
 “ in Trade, Household stuff, Implements of House-
 “ hold, Bedding, Plate, Linnen, and other things,
 “ and that there were also diverse Debts, Sum
 “ and Sums of Money due and owing unto him
 “ the said *Francis Gibbons* and his Estate, from
 “ several Persons: AND WHEREAS the said Com-
 “ missioners Parties hereto, think it necessary, for
 “ the better preserving and securing the Estate
 “ of the said *Francis Gibbons* to appoint an Assign-
 “ nee provisionally of his Estate and Effects, until
 “ Choice shall be made, by the major Part in
 “ Value of the Creditors, of an Assignee or
 “ Assignees of the Estate and Effects of the said
 “ Bankrupt, pursuant to Notice to be given in
 “ the *London Gazette* for that Purpose: Now THIS
 “ INDENTURE WITNESSETH, that the said Com-
 “ missioners, Parties to these Presents, for the
 “ purpose aforesaid, and in further Execution of
 “ the said Commission and of the Statutes therein
 “ mentioned, and by force and Virtue thereof,
 “ and for and in Consideration of the Sum of 5s.
 “ of lawful Money of *Great Britain*, to them the
 “ said Commissioners, Parties to these Presents, in
 “ Hand paid by the said *William Chesshyre*, at or
 “ before the sealing and delivering of these Pre-
 “ sents, the Receipt whereof is hereby acknow-
 “ ledged, and also in Consideration of the Cove-
 “ nants herein after contained, on the Part and
 “ Behalf of the said *William Chesshyre*, his Heirs,
 “ Executors and Administrators, to be kept, done
 “ and performed, Do hereby appoint the said
 “ *William Chesshyre* Assignee of the Estate and
 “ Effects of the said *Francis Gibbons*, and HAVE
 “ also ordered, bargained, sold, disposed, assigned,
 “ and set over, and by these Presents do, as much
 “ as

“ as in them the said Commissioners, Parties to
 “ these Presents, lieth, and they lawfully may
 “ order, bargain, sell, dispose, assign, and set
 “ over, unto the said *William Chesshyre* the Mes-
 “ senger under the said Commission, his Executors,
 “ Administrators and Assigns, all and singular the
 “ Goods, Wares, and Merchandizes, Chattels,
 “ Stock in Trade, Debts, Sum and Sums of Money,
 “ Household Stuff, and all Implements of House-
 “ hold, and other the personal Estate whatsoever
 “ of the said *Francis Gibbons*, of which he was
 “ possessed, or intituled unto, or which any
 “ other Person or Persons was or were possess-
 “ ed, IN TRUST for him at the Time he be-
 “ came Bankrupt, or at any Time since; To
 “ HAVE AND TO HOLD, ask, demand, sue for,
 “ recover, levy, and receive all and singular the
 “ Premises hereby assigned, or mentioned, or in-
 “ tended so to be, unto the said *William Chesshyre*,
 “ his Executors, Administrators and Assigns, IN
 “ TRUST for the immediate Preservation thereof,
 “ and to and for the Use, Benefit and Advantage
 “ of all the Creditors of the said *Francis Gibbons*,
 “ who have already sought, or shall hereafter, in
 “ due Time, come in and seek Relief under the
 “ said Commission, according to the several Sta-
 “ tutes therein mentioned, or some or one of them,
 “ and to and for no other Use, Trust, Intent, or
 “ Purpose whatsoever; AND the said *William Ches-*
 “ *shyre* doth hereby for himself, his Heirs, Execu-
 “ tors, and Administrators, and for every of them,
 “ covenant, promise, and agree, to and with the
 “ said Commissioners, Parties to these Presents,
 “ their Executors and Administrators, and to and
 “ with every of them, in Manner and Form fol-
 “ lowing, (that is to say) That he the said *William*
 “ *Chesshyre*, his Heirs, Executors, or Administra-
 “ tors,

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“tors, some or one of them, shal. and will, as
“soon as an Assignee or Assignees of the said
“Bankrupt’s Estate and Effects shall be duly
“chosen and appointed, pursuant to Notice in
“the *London Gazette*, and when he shall be there-
“unto required for that purpose, join with the
“major Part of the Commissioners named in the
“said Commission, in the making an Assignment
“of all and singular the said Goods, Chattels,
“Debts, Sum and Sums of Money, Wares and
“Merchandizes, and all other the Premises here-
“in before mentioned or intended to be hereby
“assigned, unto such Person or Persons as
“shall be duly chosen and appointed to be the
“Assignee or Assignees of the said Bankrupts
“Estate; AND that he the said *William Chesshyre*
“shall and will also deliver up all the Estate and
“Effects of the said Bankrupt, as shall or may
“have come to the Hands or Possession of him
“the said *William Chesshyre*, or to the Hands or
“Possession of any other Person or Persons, IN
“TRUST for him and for his Use, unto such Per-
“son or Persons as shall be duly chosen Assign-
“nee or Assignees of the said Bankrupt’s Estate
“or Effects, or otherwise as the said Commis-
“sioners shall direct or appoint. And that he the
“said *William Chesshyre* his Heirs, Executors, and
“Administrators, shall and will from Time to
“Time, and at all Times hereafter, well and
“sufficiently save, defend, keep harmless, and in-
“demnified, ALL the said Commissioners in and
“by the said Commission named and authorized
“their Heirs, Executors, and Administrators,
“and every of them, their and every of their
“Bodies, Lands, Tenements, Goods, Chattels,
“and Estate whatsoever, of, from and against
“all and all Manner of Action and Actions, Suits,
P “Arrests,

“ Arrests, Complaints, Costs, Damages, and Expences, whatsoever, which they or any of them shall or may sustain, or be put unto, for or by Reason or Means of this present Deed of Assignment, or any Act or Acts to be done or executed by him the said *William Chesshyre* in Pursuance or by Virtue of the said Commission, or Deed of Assignment respectively. IN WITNESS whereof the said Parties to these Presents have hereunto interchangeably set their Hands and Seals the Day and Year first above-written.”

Advertisement (1) for the Gazette.

Whereas a Commission of Bankrupt is awarded and issued forth against *Francis Gibbons* of, &c. and he being declared Bankrupt, is hereby required to surrender himself to the Commissioners in the said Commission named, or the major Part of them (m) on the Day of next at o’Clock in the Noon; on the Day of the same Month at o’Clock in the Noon; on the Day of following, at o’Clock in the Noon, at *Guildhall London*, and make a full Discovery and Disclosure of his Estate and Effects, when and where the Creditors are to come prepared to prove their Debts, at the second Sitting to choose Assignees, and at the last Sitting the said Bankrupt is required to finish his Examination; and the Creditors are to assent to or dissent from the Allowance of his Certificate; all Persons indebted to the

(1) The Messenger pays for the Room and inserts this Advertisement in the *Gazette*.

(m) These Sitzings should be *ten or eleven* Days Distance from each other, and the last Sitting must be on the *forty-second* Day, from the Date of the *Gazette*.

saïd

said Bankrupt, or who have any of his Effects, are not to pay or deliver the same, but to whom the Commissioners shall appoint, but give Notice to (n).

First Sitting at Guildhall.

Against this Meeting the Practicer should provide himself with the *Gazette*, in which the Sitings at *Guildhall*, fixt by the Commissioners, are inserted.

As Creditors may come in at this Sitting, we will here give Precedents of the several Forms of Depositions, necessary from the various Demands of Creditors: first observing, once for all, that Accounts current, Assignments, Bills of Exchange, Bonds, Decrees, Letters of Administration, Notes of Hand, Probates of Wills, Protests, Reports, and all other Securities whatsoever, must be produced by the respective Creditors, at the Time of their proving their Debts, and be exhibited by the Commissioners.

For divers Sums of Money.

At, &c.

Thomas Nugent. “ John Leigh of, &c. being
“ sworn and examined, the Day
“ and Year, and at the Place abovesaid, upon his
“ Oath saith, that Francis Gibbons of, &c. the Person
“ against whom the Commission of Bankrupt now
“ in Prosecution, is awarded and issued, was be-
“ fore the Date and suing forth of the said Com-
“ mission, and still is, justly and truly indebted

(n) The Clerk to the Commission.

" unto him this Examinant, in the Sum of 70l.

" for Monies had and received by the said Bank-

" rupt, to and for the Use, and

Richard Wood. " on the Account of him this

" Examinant; and also in the

" further Sum of 10l. for Money lent the said

" Bankrupt by him this Examinant; and also

" in the further Sum of 12l. for Money paid by

" this Examinant, to and for the Use of the said

" Bankrupt, and by his Order, for which said

" several Sums of Money, or any of them, or

" any Part thereof, this Examinant hath not

" had, or received, any Secu-

Thomas Life. " rity or Satisfaction."

John Leigh.

Administratrix.

At, &c.

Thomas Nugent. " *Mary Combes* of, &c. Widow

" and Administratrix of all and

" singular the Goods and Chattels, Rights, and

" Credits, which were of *James Combes* her late

" Husband deceased, at the Time of his Death,

" being sworn, &c. (as above) and still is indebted

" to this Examinant in the Sum

Richard Wood. " of 100l. for Goods sold and

" delivered by the said *James*

" *Combes* in his Life Time, to the said *Francis*

" *Gibbons*, for which said Sum of 100l. or any

" Part thereof, this Examinant hath not received,

" (nor did her said late Husband in his Life Time,

" to her Knowledge or Belief

Thomas Life. " receive) any Security or Satis-

" faction." " *Mary Combes.*"

Assignee

Assignee (o) of a Bankrupt.

At, &c.

Thomas Nugent. “ *Abraham Bentley* of, &c. one
 “ of the Assignees of the Estate
 “ and Effects of *Rowland Ross* of, &c. Bankrupt,
 “ &c. (as before) and still is justly and truly in-
 “ debted unto him this Deponent and to *John*
 “ *Mirth* of, &c. Assignees to the Estate and
 “ Effects of the said *Rowland Ross* in the Sum of
 “ 50*l.* for Goods sold and de-

Richard Wood. “ livered to the said *Francis Gib-*
 “ *bons* by the said *Rowland Ross*,
 “ before he became Bankrupt, as appears to this
 “ Examinant, by the Books of Account of the
 “ said Bankrupt, now in the Custody or Power of
 “ this Examinant, and the said *John Mirth*, or one
 “ of them, for which said Sum of 50*l.* or any
 “ Part thereof, this Examinant (nor the said *John*
 “ *Mirth* to the Knowledge or Belief of this Ex-
 “ aminant) hath received any

Thomas Life. “ Manner of Security or Satis-
 “ faction whatsoever.”

Abraham Bentley.

The usual Deposition on this Occasion is, “ By
 a Bankrupt on Behalf of his Assignee;” now we
 apprehend that such Deposition is improper, be-
 cause the *Bankrupt* may happen to have received
 the Debt since his Bankruptcy; and if so, the
 Debtor might be obliged to repay or refund it to
 the Assignees, yet sure it would be such a *Payment*
 to the *Bankrupt*, as to make him object to swear
 “ that he had not received the same, or any Part
 “ thereof, or any Security or Satisfaction whatsoever.”

(o) See fol. 119.

According therefore to this Doctrine the Bankrupt must either in some Cases be perjured, or his Creditors lose Part of his Estate and Effects. What gave Rise to the Bankrupt's making such Deposition, seems to have been, because it was necessary for him to swear to the Debt at Law, but that was for this particular Reason, because his Debtor could not be held to Bail (or arrested) unless the Bankrupt himself made Affidavit of the Debt; a *positive* Oath being required to deprive a Man of his Liberty, but as the Liberty of the Subject is not affected by a Deposition of Debt under a Commission of Bankrupt, there is no Occasion for such Oath. Therefore we decline making a Precedent of "A Deposition by a Bankrupt on Behalf of his Assignee."

Assignee of a (p) Debt.

At, &c.

John Fenshaw. "James Welsh of, &c. and
 "Miles Crouch of, &c. being
 "sworn and examined, the Day and Year, and
 "at the Place abovesaid, upon their Oaths severally say; and first this Examinant *James Welsh*
 "for himself saith, that *Francis Gibbons* of, &c.
 "the Person against whom the Commission of
 "Bankrupt now in Prosecution is awarded and
 "issued, was before the Date and suing forth of
 "the said Commission, and still is justly and
 "truly indebted unto him this Examinant in the
 "Sum of 30*l.* by Virtue of a certain Indenture
 "of Assignment duly executed by the said *Miles*
 "*Crouch* to this Examinant, dated the Day of

(p) See fol. 121.

"June

" June 1767, of one (q) Debt or
Champion Branfil. " Sum of 30*l.* due and owing to
 " the said *Miles Crouch*, from the
 " said *Francis Gibbons*. And both these Examinants
 " say that they have not, nor hath either of
 " them, to the Knowledge or Belief of the other
 " of them, received any Security or Satisfaction
 " whatsoever for the said Sum of
Richard Wood. " 30*l.* or any Part thereof."

James Welsh.
Miles Crouch.

Attorney (r).

At, &c.

Thomas Nugent. " *Edward Smith*, of, &c. [as
 " usual to] and still is justly in-
 " debted unto him this Examinant in the Sum of
 " 40*l.* for the Attendance, (s) Fees, and Monies
 " laid out and expended by him this Examinant
 " in and about the Affairs and Business of the said
 " *Francis Gibbons*, for which said
Champion Branfil. " Sum, &c. [as usual] save a
 " Note signed " *A. Sidney*," dat-
 " ed 18 Aug. last for 20*l.* payable to the Bank-
 " rupt, and indorsed by him to this Examinant;
 " and also save and except that he this Examinant

(q) If the Creditor is the Assignee of a Bond you say here,
 " of one Bond or Obligation, entered into by the said Bankrupt
 " unto the said *Miles Crouch*, in the penal Sum of with
 " Condition, for Payment, by the said Bankrupt, to the said
 " *Miles Crouch*, the Sum of [the Money due], with lawful
 " Interest for the same, on a Day long since past."

(r) See fol. 122.

(s) We apprehend that under Commissions of Bankrupt, an
 Attorney or Solicitor is not obliged to deliver a Bill, or to submit
 to a Taxation: the Courts at Law have determined that the Act
 for their Regulation does not extend to their Executors or Admi-
 nistrators, *Comb.* 348. *Barnes's Notes C. P.* 91. *Andr.* 276. 2 *Str.*
 1056,

“ has brought an Action for the said Debt in his
 “ Majesty’s Court of *King’s Bench*, at *Westminster*,
Richard Wood, “ wherein Bail has been put in
 “ above for the said Bankrupt.”
Edward Smith.

On Bill of Exchange.

At, &c.

John Fenshawe. “ *Robert Bond*, of &c. [as usual]
 “ and still is justly and truly in-
 “ debted unto him this Exami-
 “ nant in the Sum of 40*l.* by
 “ Virtue of a Bill of Exchange
 “ drawn by the said Bankrupt on
 “ the Day of last,
 “ upon *Charles Dingley*, for Pay-
Richard Wood. “ ment of the said Sum of 40*l.*
 “ six Days after Date, for Value
 “ received of this Examinant,
 “ for which said Sum of 40*l.* &c.
 “ [as usual] save and except the
 “ said Bill of Exchange, and two
 “ more Bills of the like Effect,
 “ and the Protests for Non-ac-
Thomas Life. “ ceptance and Non-payment of
 “ the said Bill.”

Robert Bond.

On a Bond.

At, &c.

John Fenshawe. “ for Principal and Interest
 “ due to this Examinant, by Vir-
 “ tue of one Bond or Obligation
 “ bearing

at Guildball.

321

Champion Branfil. "bearing Date the Day of
" under the Hand and Seal.
" of the said Bankrupt, for which
" said Sum, &c. [as usual] save
" and except the said Bond or
Richard Wood. " Obligation."

Country Creditors.

The Debts of Country Creditors must be proved by Affidavits sworn before a Master extraordinary of the Court of *Chancery*, in the Country, and produced to and exhibited by the Commissioners, at one of their Sitzings in *London*. They should be the same in Substance as Depositions, otherwise they will be rejected, but their Forms must be altered; the Addition and Description of the Bankrupt in the Commission must be exactly set forth in the Affidavits, otherwise they will not be admitted.

If the Creditor has any Security for his Debt, he must annex it to, or set it out in his Affidavit, and also save and except it therein.

On Decree.

At, &c.

Thomas Nugent. " *Charles Meriton*; of &c. [as
" before] and still is justly and
" truly indebted unto him this
" Examinant in the Sum of 500*l.*
" decreed to this Examinant
" by a Decree of the high Court
John Fenshawe. " of *Chancery*, dated the 18th Day
" of *May* now last past, made in
" a Cause depending in the said
" Court, wherein he this Exa-
" minant is Complainant, and
P 5 " the

First Sitting

Richard Wood.

" the said Bankrupt is Defen-
 " dant ; for which said Sum, &c.
 " [as usual.]"

Charles Meriton.

Executor (t).

At, &c.

Thomas Nugent.

" John James, of &c. Executor
 " of the last Will and Testament
 " of Nicholas Bradshaw, late of,
 " &c. deceased, being sworn, &c.
 " [as usual] for which said Sum
 " of, &c. [as usual] save and
 " except a Warrant of Attorney
 " dated the Day of June 1767,
 " for confessing Judgment on a
 " mutuatus in his Majesty's Court
 " of Common Pleas at Westminster."

Richard Wood.

John James.

Creditor by (u) Judgment.

At, &c.

John Fenshaw.

" George Welp, of &c. Joseph
 " Milner, of &c. Mary Jupp,
 " of &c. [as usual] and still is justly and truly
 " indebted unto these Examinants, in the Sum of
 " 850l. of lawful Money of Great Britain, for
 " Damages and (w) Costs recovered by these Ex-
 " aminants, in his Majesty's Court of King's Bench
 " at Westminster, in or about Easter Term last,
 " against the said Bankrupt, in
 " an Action upon the Case, for
 " Promises, for which said Sum

(t) See fol. 145.

(u) See fol. 148.

(w) If the Judgment is interlocutory only, the Commissioners
 will not allow the Plaintiff to add Costs to his Debt, See fol. 170.

" of

“ of 850*l.* or any Part thereof, these Examinants
 “ have not, nor hath any of them, to the Know-
 “ ledge or Belief of the other of them, received
 “ any Satisfaction or Security whatsoever, save
 “ and except the said Judgment, in the said Court
 “ of *King's Bench*, signed on or about the *seventh*
 “ Day of *June* 1767, and entered
Richard Wood. “ on Roll 862.”

George Welp.
Joseph Milner.
Mary Jupp.

If the Judgment be on a Writ of Enquiry, the Inquisition must be exhibited; if on a Verdict, or on a Confession, the Judgment Paper is to be exhibited; though this is usual, yet Lord (x) *Hardwicke* seems to think that a Copy of the Judgment itself ought to be produced; if so it must be on treble six-penny stamp'd Paper, and examined by the original Record at Mr. *Taverner Wallace's* Office, who succeeds Mr. *Tully*, as Clerk of the Judgments in the *King's Bench*.

Mortgagee (y).

At, &c.

John Fenshawe. “ *Jonas Strong*, of &c. [as usual]
 “ save and except one Indenture
 “ of Mortgage, bearing Date the
 “ Day of *June* 1767, for
 “ the Payment of 420*l.* on the
 “ 22d Day of *August* 1768, which
Richard Wood. “ said Mortgage this Examinant
 “ doth agree to assign, and doth
 “ hereby surrender and give up
 “ for the Benefit of the Credi-

(x) See *Atk. Rep.* 83.

(y) See fol. 154.

First Sitting

Thomas Life.

"tors claiming or seeking Re-
 "lief under the said Commis-
 "sion."

Jonas Strong.

On Note of Hand.

At, &c.

Thomas Nugent.

"E. B. of &c. being sworn
 "&c. [as usual] and still is justly
 "and truly indebted to this Examinant, in the
 "Sum of 890*l.* and upwards, for Money lent by
 "this Examinant to the said Francis Gibbons, for
 "which said Sum of 890*l.* or any Part thereof,
 "this Examinant hath not received any Satis-
 "faction or Security whatsoever, save the seven
 "following promisory Notes; one dated the 12th
 "of May 1767, under the Hand of the said Francis
 "Gibbons, whereby he promises to pay to this
 "Examinant, or Order, one Year after Date,
 "200*l.* with (z) Interest; the
 Champion Branfl. "other six promisory Notes are
 "under the Hand of one A. F.
 "and made payable to the said Francis Gibbons,
 "and by the said Francis Gibbons indorsed (a) to
 "this Examinant, and are for the several and
 "respective Sums following; one dated 19th
 "September 1766, for 150*l.* payable six Months
 "after Date; another dated 18th October 1766,
 "for 90*l.* payable six Months after Date; another
 "8th November 1766, for 100*l.* payable four
 "Months after Date; another dated 4th December

(z) Interest is not allowable in Bankrupt Cases, unless it be
 expressly mentioned in the Body of the Note. See fol. 159. 160.
 See id. 112.

(a) An indorsed Note may be proved under several Commissions,
 until the Party is satisfied his whole Debt. See fol. 158.

" 1766,

at Guildhall.

325

“ 1766, for 115*l.* payable five Months after
“ Date; and the other of the said Notes dated
“ 26th of December 1766, for
Richard Wood. “ 125*l.* payable six Months after
“ Date.” *E. B.*

By Partners.

At, &c.

Thomas Nugent. “ *James Lally*, of &c. [as usual]
“ and still is justly and truly
“ indebted unto him this Exa-
“ minant, and *George Adams* his
“ Partner in Trade, in the Sum
“ of 20*l.* for Goods sold and de-
“ livered by this Examinant, and
John Fenshawe. “ the said *George Adams* in Part-
“ nership as aforesaid, to the said
“ *Francis Gibbons*, for which said
“ Sum of 20*l.* or any Part there-
“ of, this Examinant hath not,
“ nor hath his Partner, to his
“ Knowledge or Belief, received
Thomas Life. “ any Security or Satisfaction
“ whatsoever.”

James Lally.

Creditor by Report.

At, &c.

Thomas Nugent. “ *Daniel Goodyer* of &c. [as
“ usual] and still is justly and
“ truly indebted unto him this
“ Examinant in the Sum of 100*l.*
“ reported due to him from the
“ said *Francis Gibbons*, by *Thomas*
“ *Cuddon*,

First Sitting

Champion Branfil. “Cuddon, Esq. one of the Masters of the high Court of Chancery, as by his Report dated the 20th Day of May last, made in a Cause depending in the said Court, wherein this Examinant is Complainant, and the said Francis Gibbons is Defendant, may more fully appear; for which said Sum, &c. [as usual.]”

Thomas Life.

Daniel Goodyer.

As the Bankrupt appeared and surrendered at the first Meeting, there is no Occasion to repeat the *Memorandum* thereof; but refer the Reader to fol. 305. But if the Bankrupt has not yet surrendered, nor does at this Sitting, then prepare the following *Memorandum*.

At, &c.

“*Memorandum*, That we, the major Part of the Commissioners, named and authorized in and by a Commission of Bankrupt awarded and issued, and now in Prosecution against Francis Gibbons, of &c. met the Day and Year, and at the Place abovementioned, pursuant to Notice in the *London Gazette* for that Purpose; but the said Francis Gibbons did not surrender himself to us, or make any Disclosure or Discovery of his Estate or Effects, or send any Excuse why he did not.”

Thomas Nugent.

John Fenshaw.

Champion Branfil.

If

If neither the Bankrupt surrenders, nor any Creditor proves or claims a Debt at this Sitting, which is not unusual, this *Memorandum* seems proper.

At, &c.

Memorandum, that the major Part of the Commissioners named and authorized, in and by a Commission of Bankrupt awarded and issued, against *Francis Gibbons*, met here the Day and Year, and at the Place abovesaid, pursuant to Notice in the *London Gazette*, but the said Bankrupt did not surrender himself pursuant to such Notice, nor did any Creditor prove or claim any Debt under the said Commission.

Thomas Nugent.
Champion Branfil.
Richard Wood.

Creditors who may not be able to attend the next Sitting to vote in the Choice of Assignees, and desirous of making over their Votes to some other Person, must execute a Deed for that Purpose, to the following Effect:

Letter to Attorney to vote in the Choice of Assignees.

“ KNOW ALL MEN by these Presents, that I
“ *Harriet Luther*, of &c. one of the Creditors of
“ (b) *Francis Gibbons*, of &c. against whom a
“ Commission of Bankrupt under the Great Seal

(b) The Addition of the Bankrupt must be exactly as in the Commission, otherwise it does not appear that the Bankrupt is the Debtor, and for this Defect therefore the Commissioners will reject it,

“ of

" of *Great Britain*, hath been awarded and issued,
 " HAVE made, ordained, constituted, and appoint-
 " ed; and by these Presents do make, ordain,
 " constitute, and appoint, *George Lucas*, of &c.
 " my true and lawful Attorney for me, and in my
 " Name, Place and Stead, to appear before the
 " Commissioners in and by the said Commission
 " named and authorized, or the major Part of
 " them, at *Guildhall, London*, or elsewhere, at
 " the Days and Times appointed in the *London*
 " *Gazette*, for the Choice of Assignees of the
 " Estate and Effects of the said *Francis Gibbons*;
 " and then and there for me, and in my Name to
 " (c) vote in the Choice of one or more Assignee
 " or Assignees of the said Bankrupt's Estate and
 " Effects, as my said Attorney, or the Commis-
 " sioners and Creditors then present shall think
 " most fit and proper, for the better Manage-
 " ment, getting in, and recovering of the said
 " Bankrupt's Estate and Effects; and to act, do,
 " and perform, all and whatsoever shall be need-
 " ful and requisite to be done in, about, or
 " concerning the Premises. AND I do hereby
 " ratify, confirm, and allow all, and whatsoever
 " my said Attorney shall lawfully do, or cause to
 " be done for me, by Virtue of these Presents,
 " and of the Power and Authority hereby to him
 " by me given. IN WITNESS whereof I the said
 " *Harriet Luther* have hereunto set my Hand and
 " Seal this 11th Day of *May*, in the *seventh* Year
 " of the Reign of our Sovereign Lord *George* the

(c) For Letter of Attorney to sign Consent to the Commissioners
 certifying the Great Seal that the Bankrupt hath conformed; to
 consent to Assignees their commencing Suits in Equity, &c. and to
 receive Dividends. See fol.

" Third,

at Guildhall.

329

"Third, &c. and in the Year of our Lord
"1767."

Harriet Luther, (L. S.)

Sealed and delivered (being
first duly (*d*) stamp'd) in
the Presence of

John James.

Thomas Marye.

This Letter of Attorney must be accompanied
with an Affidavit of its due Execution.

*Affidavit of the Execution of the above Letter
of Attorney.*

"*John James*, of maketh Oath, that he
"was present, and did see, *Harriet Luther*, of
"duly sign, seal, and as her Act and Deed deliver
"the Letter of Attorney hereunto annexed, and
"that the Name *Harriet (e) Luther* subscribed
"against the Seal of the said Letter of Attorney,
"hereunto annexed, is the own proper Hand
"Writing of the said *Harriet Luther*, and that
"the Names of this Deponent, and of *Thomas*
"*Marye*, subscribed to the said Letter of Attor-
"ney, as Witnesses to the Execution thereof, are

(*d*) On a single Half Crown.

(*e*) If the Party puts her Mark instead of her Name, the Affi-
davit must run thus: "and that the *Mark* subscribed against the
Seal of the said Letter of Attorney, hereunto annexed, thereto *set*,
is the own proper *Mark* of the said *Harriet Luther*."

" of

First Sitting

“ of this Deponent's, and of the said *Thomas Ma-*
 “ *rye's* own proper respective Hands Writing.

John James.

Sworn at Saint *Edmond's (f) Bury*,
 in the County of *Suffolk*, the
 11th Day of *May*, in the Year
 of our Lord 1767, before me,
Nicholas Row,
 Master in *Chancery (g)* extraordinary.

The above Letter of Attorney and Affidavit
 must be exhibited.

Second Sitting at Guildhall.

As some or one of the Commissioners may hap-
 pen to attend this Sitting, who did not at either
 of the former ones, we will here give the proper
 Precedent on such an Occasion.

Memorandum of the Qualification of two of the Com-
missioners who have not acted.

At, &c.

“ *Memorandum*, that *Richard Wood*, and *Thomas*
 “ *Life*, Gentlemen, being two of the Commis-
 “ sioners named and authorized, in and by a
 “ Commission of Bankrupt, awarded and issued

(f) If the Place where the Affidavit was sworn, is not inserted
 in the *Jurat*, it will not be received, because, for ought appears to
 the contrary, it might have been taken within ten Miles of *London*,
 and if so, the Master extraordinary had no Authority to swear the
 Party.

(g) So, the Master must set himself out to be a Master extraordi-
 nary in *Chancery*, otherwise he will not appear to have any Author-
 ity to take Affidavits in that Court.

“ against

“ against *Francis Gibbons* of, &c. did before they
 “ proceeded to act in the said Commission, re-
 “ spectively take the Oath of a Commissioner, pre-
 “ scribed and specified, in and by an Act of Par-
 “ liament, passed in the *fifth* Year of the Reign of
 “ His late Majesty King *George the Second*, inti-
 “ tuled “ An Act to prevent the committing of
 “ Frauds by Bankrupts,” according to the Direc-
 “ tions of the said Act.”

Witness

Richard Wood.

Thomas Nugent.

Thomas Life.

As we have before [fol. 305. 326.] given Forms of
 the *Memorandums*, when Bankrupt surrenders, or
 does not, we will not here insert them again, but
 only observe, that it seems proper always to make
 a *Memorandum* in either Case.

(b) *Claims.*

At, &c.

Thomas Nugent.

“ *Be it remembered*, that *James*

Richard Wood.

“ *Hockaday* of, &c. the Day and

“ Year, and at the Place above-

“ mentioned, claimed a Debt of

“ 100*l.* as due to *John Winning-*

“ *ton* of, &c. from the said Bank-

Thomas Life.

“ rupt for Goods sold and de-

“ livered.” *James Hockaday.*

The Claimant is not sworn, and therefore the
 Claim will not be sufficient to intitle him to a
 Share of the Dividend, till duly proved.

All the Creditors present having proved their
 Debts, they proceed to the Choice of Assignees,
 of this Choice one of the following *Memorandums*
 is made.

(b) See fol. 116.

Memorandum

Memorandum of the Choice of Assignees.

At, &c.

Thomas Nugent.

" Memorandum, that this be-
 " ing the Day appointed in the
 " *London Gazette*, for the Choice of Assignees, of
 " the Estate and Effects, of *Francis Gibbons*, of &c.
 " the Person against whom the Commission of
 " Bankrupt, now in Prosecution, is awarded and
 " issued, We, whose Names are hereunder writ-
 " ten, being the major Part in Value of the Cre-

Richard Wood.

" ditors of the said *Francis Gib-*
 " *bons*, present at this Sitting,
 " and who have proved our Debts
 " to be 10*l.* or upwards, have chosen, and do here-
 " by nominate and chuse, *John Partridge*, of, &c.
 " and *Charles Dennis*, of, &c. to be Assignees of
 " the Estate and Effects of the said *Francis Gibbons*,
 " and we do hereby desire the Commissioners to
 " make an Assignment thereof to them accordingly."

(i) *John Partridge*.

We do accept of the
 said Trust, and pro-
 mise to execute a
 counter Part of the
 Assignment to the
 Commissioners.

John Partridge.*Charles Dennis*.*John Leigh*.*Mary Combes*.*Abraham Bentley*.

for himself and

John Mirth.*James Welsh*.(i) *Charles Dennis*.*George (k) Adams*.

for himself, and

Company.

(i) But he may not happen to be a Creditor, for though an
 Assignee generally is, it is not at all necessary.

(k) We apprehend that though this Person was not the Partner
 who *actually* swore to the Debt, that yet he has a *legal* Right to
 sign this Choice, and also to sign Consent to the Commissioners
 certifying the *Great Seal*, that Bankrupt has conformed; and he
 may also empower a Person to act for the Partnership.

" Memorandum,

Memorandum, That before the Creditors proceeded to the Choice of Assignees, they directed
 " that the Monies to be received
Thomas Life. " from Time to Time, as often
 " as they amounted to the Sum
 " of 100*l.* should be paid into the Hands of Sir
 " *Richard Glynn* and Company, Bankers, in *Lombard Street, London.*"

*Memorandum of the Choice by one Creditor only,
 and that by Power of Attorney.*

At, &c.

Thomas Nugent. " Be it remembered, that this
 " being the Day appointed in
 " the *London Gazette*, by the major Part of the
 " Commissioners named and authorized, in and
 " by a Commission of Bankrupt awarded and
 " issued, against *Francis Gibbons* of, &c. for the
 " Choice of one or more Assignee or Assignees of
 " the said Bankrupt's Estate and Effects; *Samson*
 " *Bond*, by Virtue of a Letter of Attorney dated
 " 20th of May now last past,
Richard Wood. " from *Jonas Strong*, who hath
 " duly proved a Debt of 10*l.* or
 " upwards under the said Commission, and is the
 " major Part in Value of the Creditors now pre-
 " sent, who have proved Debts under the said
 " Commission, doth nominate, elect, and chuse
 " *William (1) Twist* to be sole Assignee of the
 " Estate and Effects of the said Bankrupt, and

(1) The Attorney cannot, we apprehend chuse his Principal, Assignee, because he is not present to accept the Trust, and this his Principal could not appoint him to do, even by the Letter of Attorney. See fol. 142. Note (u).

" doth

“ doth desire the said Commissioners to make an
 “ Assignment thereof to the said
Thomas Life. “ *William Twist* accordingly.”
Samson Bond.

I do accept, &c.
William Twist.

Memorandum of only one Creditor, his voting in
 the Choice of Assignees.

At, &c.

Thomas Nugent.

“ Be it remembered, &c. [as
 “ before] I *Luke Cleave* who have
 “ proved a Debt of 10*l.* or up-
 “ wards, under the said Com-
 “ mission, and am the major Part
 “ in Value of the Creditors now
 “ present, who have proved
 “ Debts under the said Commis-
 “ sion, do nominate, &c. myself
 “ sole Assignee of the said Bank-
 “ rupt’s Estate and Effects, and
 “ do desire the said Commissio-
 “ ners to make an Assignment
 “ thereof to me accordingly.”

Richard Wood.

Thomas Life.

Luke Cleave.

I do accept, &c.
Luke Cleave.

If it should happen that no Creditor of sufficient
 Value, attends this Sitting the Choice it seems
 must be adjourned to some future Day, of which
 due Notice must be given in the *Gazette*.

Memorandum

Memorandum of the Adjournment of the Choice of Assignees.

At, &c.

“ Be it remembered, &c. [as before to “ and
 “ *Effects*”] no Creditor, who had proved a
 “ Debt of 10*l.* or upwards, under the said Com-
 “ mission, voted in the Choice of one or more
 “ Assignee or Assignees of the said Bankrupt’s
 “ Estate and Effects; we therefore do hereby ad-
 “ journ the said Choice untill *Thursday* the (m)
 “ Day of next at ten o’Clock in the
 “ Forenoon at Guildhall London.”

Assignment (n) to Assignees, after a provisional Assignment.

“ THIS INDENTURE tripartite, made, &c. BE-
 “ TWEEN *William Chesshyre* of, &c. Gentleman of
 “ the first Part; *Thomas Nugent, John Fenshawe,*
 “ Esquires, and *Champion Branfil*, Gentleman,
 “ the major Part of the Commissioners named and
 “ authorized, in and by a Commission of Bank-
 “ rupt, awarded and issued against *Francis Gibbons*
 “ of, &c. of the second Part; *John Partidge* of,
 “ &c. and *Charles Dennis* of, &c. of the third Part
 “ [Recite the issuing of the Commission; that the Party
 “ traded; that he became indebted to the petitioning
 “ Creditor; that the Commissioners adjudged him Bank-
 “ rupt; see fol. 301. then recite the provisional

(m) Seven Days Notice at least should be given in the *Gazette* of this Adjournment, and the Cause thereof.

(n) To be engrossed on a single 2*s* 6*d* stampd Skin of Parchment.

Assignment,

" Assignment, which see fol. 210. viz. *the Date,*
 " *the Parties, the Premises, the Habendum,* that
 " *Cheshyre the Messenger* covenanted to assign to
 " *the Assignees chosen by the Creditors]* AND WHERE-
 " AS at a meeting of the major Part of the
 " Commissioners, in and by the said Commission
 " named and authorized, at the *Guildhall* of the City
 " of *London*, this Day of pursuant to
 " Notice in the *London Gazette* for that purpose
 " given, the major Part in Value of the Creditors
 " of the said *Francis Gibbons* then present, and
 " who had proved their Debts under the said
 " Commission, and whose Debts respectively
 " amounted to ten Pounds or upwards, did nomi-
 " nate, elect, and chuse the said *John Partridge*
 " and *Charles Dennis* to be Assignees of the Estate
 " and Effects of the said *Francis Gibbons* and desired
 " an Assignment thereof to be made to them ac-
 " cordingly by the said *William Cheshyre*, and the
 " said Commissioners: NOW THIS INDENTURE
 " WITNESSETH, that the said *William Cheshyre* for
 " and in Consideration of the Sum of 10s. of
 " lawful Money of *Great Britain*, to him in hand
 " paid by the said *John Partridge* and *Charles*
 " *Dennis*, at or before the Sealing and Delivery of
 " these Presents, in Pursuance of the above men-
 " tioned Covenant in the above recited Inden-
 " ture mentioned, by the Consent and Direction
 " of the said Commissioners, Parties to these
 " Presents, testified by their being Parties to, and
 " sealing and delivering hereof, HATH ordered,
 " bargained, sold, disposed, assigned and set over,
 " and by these Presents DOth order, bargain,
 " sell, dispose, assign and set over, unto the said
 " *John Partridge* and *Charles Dennis*, their Execu-
 " tors and Administrators, all and singular the
 " Goods, Wares and Chattels, Debts, Sum and
 " Sums

" Sums of Money, and all other the personal Estate
 " whatsoever, of the said *Francis Gibbons*, of
 " which he was possessed, or intituled unto, or
 " which any other Person or Persons was or were
 " possessed, IN TRUST for him at the Time he
 " became Bankrupt, or at any Time since; and
 " all the Right, Title, Interest, Property, Claim
 " and Demand whatsoever, of him the said
 " *William Chesshyre*, of, in or to the same, or
 " any Part thereof, as Assignee of the Estate and
 " Effects of the said *Francis Gibbons*. AND the
 " said Commissioners, Parties to these Presents,
 " being the major Part of the said Commissioners,
 " in and by the said Commission named and au-
 " thorized, in Consideration of 5s. to them or one
 " of them, in Hand also paid by the said *John*
 " *Partridge* and *Charles Dennis*, HAVE ratified and
 " confirmed, and by these Presents DO, as much
 " as in them lieth, and they lawfully may, ratify
 " and confirm unto the said *John Partridge* and
 " *Charles Dennis*, all and singular the said Goods,
 " Wares and Chattels, Debts, Sum and Sums of
 " Money, and other Things, and all the Estate
 " whatsoever and wheresoever, of and belonging
 " to the said *Francis Gibbons*, herein before order-
 " ed, bargained, sold, disposed, assigned and set
 " over by the said *William Chesshyre* Party hereto;
 " TO HAVE AND TO HOLD, ask, demand, sue for,
 " recover, levy and receive the said Goods, Wares
 " and Chattels, Debts, Sum and Sums of Money,
 " and other Things, and all other the Effects
 " whatsoever, of or belonging to the said *Francis*
 " *Gibbons* hereby ordered, bargained, sold, dis-
 " posed, assigned and set over, or hereby menti-
 " oned or intended so to be, unto the said *John*
 " *Partridge* and *Charles Dennis*, their Executors,
 " Administrators and Assigns, UPON TRUST NE-

Q

" VERTHELESS

" VERTHELESS (that is to say) to and for the
 " Use, Benefit and Advantage, of all the Credi-
 " tors of the said *Francis Gibbons*, who have al-
 " ready sought, or shall hereafter in due Time
 " come in and seek Relief by Virtue of the said
 " Commission, according to the Limitations and
 " Directions of the several Statutes, in that Be-
 " half made and provided, and to and for no
 " other Use, Intent, or Purpose whatsoever; AND
 " the said *John Partridge* and *Charles Dennis* do
 " for themselves, severally and respectively, and
 " for their several and respective Heirs, Executors
 " and Administrators, covenant, promise and
 " agree, to and with the said Commissioners,
 " Parties to these Presents, and to and with every
 " of them, by these Presents, that they the said
 " *John Partridge* and *Charles Dennis*, their Execu-
 " tors, Administrators and Assigns, shall and will
 " with all convenient Speed, by all lawful and
 " equitable Ways and Means, use their utmost
 " Endeavours to recover and get in the several
 " Goods, Wares and Chattels, Debts, Sum and
 " Sums of Money, and all other the Estate and
 " Effects of the said *Francis Gibbons*, and after
 " Possession had and obtained of the said Goods,
 " Wares and Chattels, Debts, Sum and Sums of
 " Money, Estate and Effects whatsoever, or any
 " Part thereof, shall and will sell and dispose of
 " the same, to and for the most Money and best
 " Price they can get for the same; AND FURTHER,
 " that the said *John Partridge* and *Charles Dennis*
 " their Executors, Administrators and Assigns,
 " shall and will from Time to Time, and at all
 " Times hereafter, upon reasonable Request or
 " Notice, to them given for that Purpose, render
 " and give unto the said Commissioners, Parties
 " to these Presents, or the major Part of the said
 " Commissioners,

" Commissioners, in and by the said Commission
 " named and authorized, and the major Part of
 " the Commissioners to be named in and by any
 " renewed Commission, which may be awarded
 " against the said *Francis Gibbons* at such Time
 " and Place as they shall appoint, a true, just and
 " perfect Account in Writing under the Hands
 " and Seals of the said *John Partridge* and *Charles*
 " *Dennis* their Executors and Administrators, of
 " what and how much Money and other Satis-
 " faction, they the said *John Partridge* and *Charles*
 " *Dennis*, their Executors and Administrators,
 " shall have had, recovered, and received, by
 " Virtue or Means of this present Deed of Assign-
 " ment, or otherwise, out of the Estate and Ef-
 " fects of the said *Francis Gibbons*, and such Mo-
 " ney or other Satisfaction, as upon such Account
 " shall appear to be had, raised and received, by
 " the said *John Partridge* and *Charles Dennis* their
 " Executors or Administrators, they the said *John*
 " *Partridge* and *Charles Dennis*, their Executors
 " or Administrators, shall and will well and truly
 " pay or cause to be paid, unto them the said
 " Commissioners, Parties to these Presents, or the
 " major Part of the said Commissioners in and by
 " the said Commission named, or to the Commis-
 " sioners to be named, in any such renewed Com-
 " mission, or the major Part of them, or to such
 " Person or Persons as they shall appoint, to the
 " End, the same or other Satisfaction, may be by
 " them the said Commissioners in and by the said
 " Commission named and authorized, or the
 " major Part of them, ordered, disposed, distri-
 " buted, and divided, unto and amongst all and
 " every the Creditors of the said *Francis Gibbons*,
 " who have already sought, or shall hereafter in
 " due Time come in, and seek Relief by Virtue

“ of the said Commission, according to the Limitations and Directions of the several Statutes therein mentioned, proportionably according to the several Debts, owing to them severally and respectively from the said *Francis Gibbons*.
“ AND LASTLY, the said *John Partridge* and *Charles Dennis* do hereby for themselves severally and respectively, and for their several and respective Heirs, Executors and Administrators, covenant, promise and agree, to and with the said Commissioners, Parties to these Presents, and to and with every of them, their Heirs Executors and Administrators, that they the said *John Partridge* and *Charles Dennis*, their, and each of their Executors and Administrators, shall and will from Time to Time, and at all Times hereafter, well and sufficiently save, defend, keep harmless and indemnified, the said Commissioners, in and by the said Commission named and authorized, and also the said *William Chesshyre* their Executors and Administrators, and every of them, their and every of their Bodies, Lands, Tenements, Goods, and Chattels, of, touching or concerning all and all manner of Action and Actions, Suits, Arrests, Troubles, Costs, Damages, and Expences whatsoever, which they or any of them shall sustain or be put unto, for or by reason of this present Deed of Assignment, or any other Act or Acts, Thing or Things, lawfully done or executed by Virtue of the said Commission or the said recited Assignment, or their or any of their lawful Intermeddling in any of the Estate of the said *Francis Gibbons*, IN WITNESS, &c.”

Assignment

*Assignment of Bankrupt's Estate to Assignees, where
no provisional Assignment had been previously made.*

“ THIS INDENTURE made the, &c. BETWEEN
 “ Thomas Nugent, John Fenshawe Esquires, and
 “ Champion Branfil, Gentleman of the one Part;
 “ and John Partridge of &c. and Charles Dennis
 “ of &c. of the other Part; [recite the issuing of
 “ the Commission; that the Party traded; that he be-
 “ came indebted to the petitioning Creditor; that he
 “ was adjudged and declared Bankrupt; that at the
 “ Time of his Bankruptcy, he was possessed of a per-
 “ sonal Estate; that the said John Partridge and
 “ Charles Dennis were duly chosen Assignees. See last
 “ Assignment.] NOW THIS INDENTURE WIT-
 “ NESSETH, that they the said Commissioners,
 “ Parties to these Presents, in Pursuance of the
 “ said above in part recited Commission, and of
 “ the Statutes therein mentioned, and also for,
 “ and in Consideration of, the Sum of five Shil-
 “ lings a piece to them the said Commissioners,
 “ Parties hereto, in Hand respectively well and
 “ truly paid, before the Ensealing and Delivery
 “ of these Presents, by the said John Partridge and
 “ Charles Dennis, the Receipt whereof is hereby
 “ acknowledged, and also for and in consideration
 “ of the Covenants herein after reserved and
 “ contained on the Part and Behalf of them the
 “ said John Partridge and Charles Dennis, their
 “ Executors, Administrators and Assignees to be
 “ kept done and performed, HAVE ordered, &c.
 “ and by these Presents do (as much as in them
 “ the said Commissioners lies, and they lawfully
 “ may) order, &c. unto the said John Partridge
 “ and Charles Dennis, their Executors, Admini-
 “ strators and Assigns, ALL and singular the
 “ Goods,

“ Goods, Wares, Merchandizes, Debts, Sum and
 “ Sums of Money, Estate, and Effects of him,
 “ the said *Francis Gibbons*, whatsoever and where-
 “ soever, TO HAVE AND TO HOLD, receive, and
 “ enjoy the said Goods, Wares, Merchandizes,
 “ Debts, Sum and Sums of Money, and all other
 “ the Estate and Effects herein before ordered,
 “ &c. unto them the said *John Partridge* and
 “ *Charles Dennis*, their Executors, Administrators
 “ and Assigns, IN TRUST NEVERTHELESS, to and
 “ for the Use, Benefit, and Advantage of them-
 “ selves, and all and every other the Creditors of
 “ the said *Francis Gibbons*, who already have, or
 “ hereafter shall or may in due Time come in, and
 “ seek Relief under the said Commission, accord-
 “ ing to the Limitations and Directions of the
 “ said several Statutes, made concerning Bank-
 “ rupts as aforesaid. AND they the said *John Par-*
 “ *tridge* and *Charles Dennis*, for themselves sever-
 “ rally, and respectively, and for their several and
 “ respective Heirs, Executors and Administrators,
 “ do covenant, promise, grant and agree to and
 “ with the said Commissioners, Parties hereunto,
 “ and to and with every of them by these Presents,
 “ in manner and Form following, that is to say,
 “ that they the said *John Partridge* and *Charles*
 “ *Dennis*, their Executors, Administrators and
 “ Assigns, shall and will pay or cause to be paid
 “ into the Hands of *Sir Richard Glynn, Bart. and Co.*
 “ Bankers in *Lombard Street London*, the Monies
 “ arising by, and to be received from Time to
 “ Time, out of the Estate and Effects of the
 “ said *Francis Gibbons*, as often as the same
 “ shall amount to the Sum of 100*l.* or upwards.
 “ [Covenant from Assignees to get in Bankrupt's Ef-
 “ fects; to give Commissioners an Account thereof, and
 “ to deliver the same over to them or whom they shall
 “ appoint.

"appoint. See last Assignment.] AND they the said
 "John Partridge and Charles Dennis, for themselves
 "severally and respectively, and for their several
 "and respective Heirs, Executors, and Admini-
 "strators, do further covenant, promise, and
 "agree, to and with the Commissioners, Parties
 "hereto, and to and with every of them, and
 "their Executors and Administrators, that they
 "the said John Partridge and Charles Dennis, their
 "and each of their Executors, Administrators and
 "Assigns, shall and will from Time to Time, and
 "at all Times hereafter, well and sufficiently
 "save, defend and keep harmless and indemnifi-
 "ed, as well the said Commissioners, Parties to
 "these Presents, in and by the said Commission
 "named and authorized, or by any renewed Com-
 "mission, to be named or authorized, and their
 "Heirs, Executors and Administrators and every
 "of them, as their and every of their Bodies,
 "Goods, Chattels, Lands and Tenements, and
 "every of them their and every of their Messen-
 "gers, Agents and Servants, who have been
 "by them or any of them employed, in or
 "about the Execution of the said Commission,
 "of, from, and against, all and all Manner of
 "Actions, Suits, Troubles, Charges, Damages,
 "and Expences whatsoever, that shall or may, at
 "any Time or Times hereafter arise, happen, or
 "come unto them the said Commissioners, or any
 "or either of them, or any or either of their
 "Messengers, Agents, Servants, Heirs, Exe-
 "cutors, or Administrators, for, or by Reason, or
 "Means of this present Deed of (q) Assignment,
 "or any other Act, Matter, or Thing, by them,
 "or either or any of them, lawfully acted or

(q) "Assignment" to be Bargain and Sale in that Deed."

“done, by Virtue of the said recited Commission,
 “or by their or any of their lawful Intermeddling
 “in the Estate or (r) Effects of the said Francis
 “Gibbons. IN WITNESS, &c.”

Charles Jones, the petitioning Creditor of Francis
 Gibbons Bankrupt, Debtor to James Browne,
 for the Costs of suing out and prosecuting a Com-
 mission of Bankrupt against the said Francis
 Gibbons.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending the petitioning Creditor for In- structions	}	0	6 8
Drawing and engrossing Affidavit (s) of Debt, Duty and Oath		0	6 0
Bond to the Great Seal, and Duty		0	6 0
Petition to Great Seal for Commission		1	1 0
Paid for Commission		(r) 10	15 2
Solicitor's Fee on suing it out		1	0 0

(r) “Or Effects” to be omitted in “Bargain and Sale.”

(s) If the Affidavit is made by several Creditors, the Solicitor
 is to be allowed more according to the extraordinary Length oc-
 casioned thereby.

(r) The Secretary of Bankrupt's Bill for getting the Commission
 past the Great Seal, should, it seems, consist of the following Ar-
 ticles only, viz.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Petition for Commission and Duty		0	7 0
Secretary's Fee, and filing Affidavit		1	3 0
Commission and Hanaper Fee		4	18 0
Private Seal		2	2 0
Messenger (if necessary)		2	2 0
Office Copy of petitioning Creditor's Affidavit, (accord- ing to Length) usually about	}	0	3 2
		10	15 2

Paid

at Guildhall.

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	l.	s.	d.
Paid Sheriff's Officer attending to prove } Bankrupt's Arrest	1	1	0
Paid Clerk of the Papers of the King's } Bench Prison attending to prove how } long Bankrupt had been detained in the } Custody of the Marshal of that Prison } [or Clerk of the Papers of the Fleet } Prison]	1	1	0
Paid the Commissioners 20s. a-piece at } first Sitting on Party being found } Bankrupt	3	0	0
Solicitor attending with the Commission } and Proceedings	1	0	0
Paid Commissioners signing Certificate that } Party was declared Bankrupt, in order } to procure a Warrant from a Judge or } Justice of Peace for his Apprehension } and Commitment	3	0	0
Solicitor preparing same and attending } thereon	1	0	0
Paid Commissioners signing Certificate that } petitioning Creditor had proved his } Debt in order to see Bankrupt Prisoner }	3	0	0
Solicitor preparing same and attending	1	0	0
Drawing provisional Assignment	1	1	0
Ingrossing and Counterpart	1	1	0
Parchment and Duty	0	8	0
Paid Commissioners executing same	3	0	0
Solicitor attending	1	0	0
Paid Commissioners taking Bankrupt's Sur- } render, and giving him their Protection }	3	0	0
Solicitor preparing same and attending	1	0	0
Paid Commissioners on their first Sitting at } Guildhall	3	0	0

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Solicitor preparing Depositions and Proceedings	1	0	0
Paid Commissioners on second Sitting at Guildball	3	0	0
Solicitor preparing Depositions and Proceedings	1	0	0
Drawing Assignment two Skins (being a Confirmation of the provisional Assignment)	2	2	0
Ingrossing and Counterpart	2	2	0
Parchment and Stamp	0	16	0
Paid Commissioners executing same	3	0	0
Solicitor attending	1	0	0
Drawing Bargain and Sale, two Skins	2	2	0
Ingrossing it two Parts	2	2	0
Parchment and Stamp	0	16	0
Paid Commissioners executing same	3	0	0
Solicitor attending	1	0	0

It is not to be supposed that the Solicitor will ever have Occasion to make out such a Bill of Costs as the above, under one and the same Commission, it is only offered as a Precedent, from which may be taken the proper Charges in almost all Circumstances which can possibly happen at this Stage of the Proceedings, the Solicitor therefore will make the intended Use of it, and remember to put Dates where required.

When the Bill has been perused and allowed by the Commissioners, the Solicitor must underwrite the following Order for Payment thereon; viz.

At,

At, &c.

2d Day of June 1767.

“ We whose Names are hereunto subscribed,
 “ being the major Part of the Commissioners
 “ named and authorized, in and by a Commission
 “ of Bankrupt awarded and issued against *Francis*
 “ *Gibbons*, of &c. having inspected the above Bill
 “ of Charges and Disbursements, do tax and
 “ ascertain the same at the Sum of
 “ And we do hereby direct and order *John Par-*
 “ *tridge* and *Charles Dennis*, the Assignees of the
 “ Estate and Effects of the said Bankrupt, to pay
 “ the said Sum of out of the first
 “ Monies or Effects of the said Bankrupt, that
 “ shall be got in and received under the said Com-
 “ mission; Witness our Hands the Day and
 “ Year, and at the Place above mentioned.”

Thomas Nugent.
Richard Wood.
Thomas Life.

We will here consider against whom the Soli-
 citor must take his Remedy in order to recover
 the Expences of suing out the Commission, when
 the Bankrupt's Estate and Effects are not sufficient
 to discharge the same; and also whether a Bill of
 Fees and Disbursements under Commissions of
 Bankrupt, are within Stat. 2 Geo. 2. c. 23. for
 regulating Attornies and Solicitors.

What is said in the Books concerning the above
 Matters, seems very unsatisfactory, for the follow-
 ing Report is all we were able to find on the
 Subject.

The Mother of one *Hicks* employed an Attorney to take out a Commission of Bankrupt against her Son, she being a principal Creditor to him, and this was done out of Affection to her Son, in order to set him up a clear Man in the World again; but at the same Time that she gave these Instructions to the Attorney, she told him, he must not expect to be paid by her, but must be satisfied out of the Effects of the Bankrupt; the Attorney accordingly laid out several Sums of Money in procuring the Commission, before Assignees could be appointed, and when they were nominated, and had agreed to take upon themselves this Trust, by setting their Hands as Parties to the Deed, he was at other (u) Charges too, upon which he now brought his Action against the Defendants as Assignees, to be satisfied for the whole which he had laid out; it appearing upon the Face of the Evidence, as it stood at present, that the Assignees had not received Effects enough of the Bankrupt in the whole, to answer so much as the Bill of the Attorney, nor were likely to do so; a Doubt arose whether the Attorney should come upon the Assignees at all, or at most for any more than the Attorney had laid out after they had accepted the Assignment, for they could not be supposed to agree to any more than they themselves were privy to; but the Counsel observed, that as the Effects of the Bankrupt were not likely to answer this Demand, and as the taking out the

(u) Lord *Hardwicke* said, where a Solicitor carried on Suits in Equity for an Assignee, without the Authority of the major Part in Value of the Creditors, at a Meeting of them had for that Purpose, in Pursuance of previous Notice of such Meeting in the *London Gazette*, that the Estate of the Bankrupt was not liable to his Bill for such Suits, but that the Solicitor had a personal Remedy against the Assignee who had employed him. *Atk. Rep.* 210. pl. 116.

Commission by the Mother was not in an adversary Way to get in her Debt, but out of Friendship and Affection to her Son, to the Prejudice perhaps of many of the Creditors; she ought to be answerable to the Attorney. The Fact appearing thus, Lord Chief Justice (w) *Raymond* said, it was true indeed the Attorney ought to be satisfied, first, for procuring the Commission; but yet he thought too that it would be Something of an hard Case, that the Assignees should be any further liable than the Effects amounted to; but then it coming out upon farther Examination, that the Effects were appraised to more than the Bill came to, though the Assignees had not got them into their actual Possession; the Court said the Plaintiff's Demand was clearly good against them, because they had a Right to get them wherever they could find them.

The Reporter (Mr. Serjeant (x) *Barnardiston*) adds, that the Chief Justice seemed to be of Opinion, that the Plaintiff must be nonsuited, because Statute 3 Jac. c. 7. requires that every Attorney shall deliver a Bill signed with his own Hand, before he commences a Suit for his Fees; and the Chief Justice continued of this Opinion, notwithstanding the Counsel argued, that taking out a Commission of Bankrupt was not within the Act.

However well founded the Chief Justice's Opinion, relative to this Matter, might have been at the Time it was given, it is *now* certain that the Bills of Fees and Disbursements of Solicitor, under Commissions of Bankrupt, whether they be employed by the petitioning Creditor, or by the Assignees, are not within the said

(w) *Barnard. K. B. 315.*

(x) *Barnard. K. B. 315. 3. 6.*

Statute of *James*, or the more modern (*y*) one of the late King, for the first of those Bills of Costs are to be settled by the (*z*) Commissioners, and all subsequent ones by a (*a*) Master in *Chancery*.

William Chesbhyre, *the Messenger's Bill on the Commission against Francis Gibbons.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Summoning and attending the Commis- sioners to ——— Coffee-house	0	10	0
Paid for Room, Pens, Ink, and Paper	0	3	0
Warrant (<i>b</i>) of Seizure, Stamp and Tin Box	0	5	0
Executing (<i>c</i>) Warrant at Bankrupt's House	0	13	4
Coach or Horse Hire what <i>actually</i> paid, if necessary.			
Summoning Bankrupt to surrender, Du- plicate thereof, and serving same	0	5	0
Writing Advertizement, and attending Gazette therewith ———	0	2	6
Paid Gazette ———	0	12	6
Appraisement of the Household Goods and Stock in Trade by two (<i>d</i>) Persons, and fair Copy of Inventory ———	1	1	0

(*y*) Stat. 2 Geo. 2. c. 23. S. 23. perpetuated by Stat. 30 Geo. 2. c. 19 S. 75.

(*z*) Stat. 5 Geo. 2. c. 30. S. 25.

(*a*) Stat. 5 Geo. 2. c. 30. S. 46.

(*b*) It is the proper Business of the Solicitor of the Commission to prepare this Warrant, but he very seldom, if ever, does.

(*c*) In this Charge is included the keeping Possession the Day the Warrant is executed; and for executing the Warrant in any other House or Place, besides the first, (including the keeping the Possession the first Day) for each Place, 6s. 8d.

(*d*) For each Day they are necessarily employed in appraising same, to each of them 10s. 6d.

Warrant

at Guildhall.

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	l.	s.	d.
Warrant to summon Witnesses, attending Commissioners to sign same, writing Summonces for the Witnesses, and serving them therewith	0	6	8
Summoning and attending the Commissioners on their first Sitting at Guildhall	0	6	8
Paid for Hall, Pens, &c.	0	3	0
Summoning and attending Commissioners at their second Sitting	0	6	8
Paid for Hall, Pens, &c.	0	3	0
Possession (e) sixteen Days, at 5s. each Day	4	0	0
Summoning and attending the Commissioners at Coffee-house, to execute Assignment	0	6	8
Paid for Rooms, Pens, &c.	0	3	0
Same to execute Bargain and Sale	0	9	8

There must be proper Dates, and the like Order of the Commissioners for Payment, as on the Clerk to the Commission's Bill; *mutatis mutandis*.

Memorandum of executing Assignment, and settling the Solicitor's and Messengers Bills.

At, &c.

" *Memorandum*, That we, whose Names are hereunto subscribed, being the major Part of the Commissioners, named and authorized, in and by a Commission of Bankrupt awarded and

(e) And for keeping Possession of the Bankrupt's Effects, in every such other House or Place besides the first, for each Day after the Day of Seizure to the Day of the Choice of Assignees, inclusive, including what the Messenger pays his Man, 3s. 4d.

" issued

“ issued against *Francis Gibbons*, of &c. met the
 “ Day and Year, and at the Place abovementioned, and examined and executed an Assignment of the said Bankrupt’s Estate and Effects, to *John Partridge*, of &c. and *Charles Dennis* of &c. being the Assignees chosen under the said Commission; and at the same Time taxed and settled [or *ascertained and allowed*] the petitioning Creditor’s Charges and Expences of suing out and prosecuting the said Commission to this Time, viz. the Solicitor’s Bill at the Sum of and the Messenger’s Bill at the Sum of making together the Sum of ”.

Thomas Nugent.

Richard Wood.

Thomas Life.

Bargain (f) and Sale,

“ THIS INDENTURE made the Day of
 “ in the *seventh* Year of the Reign of our Sovereign Lord George the *Third* by the Grace of God of *Great Britain France and Ireland*, King, Defender of the Faith, &c. and in the Year of our Lord 17 Between *T. N.* Esquire, *R. W.* and *T. L.* Gentlemen of the one Part, and *John Partridge* of &c. and *Charles Dennis* of &c. of the other Part, [*recite the Commission; Party trading, becoming indebted to petitioning Creditor; and being declared Bankrupt.*] AND WHEREAS the major Part of the said Commissioners, Parties to these Presents, in further Execution of the said Commission, and by due Examination of

(f) The Original, to be executed by the Commissioners, must be engrossed on five Shilling stamp’d Skins of Parchment; and the Counterpart, to be executed by the Assignees, on 2s. 6d. stamp’d Skins.

“ Witnesses

" Witnesses upon Oath found, or it otherwise
 " appeared unto them, that the said *Francis Gib-*
 " *bons* at the Time or Times he became Bankrupt
 " as aforesaid, was seized, interested in, or intitled
 " unto diverse Messuages, Lands, Tenements,
 " and Hereditaments, situate, lying, and being at
 " in the County of and elsewhere
 " in the Kingdom of *Great Britain*. Now THIS
 " INDENTURE WITNESSETH, that the said Com-
 " missioners, Parties to these Presents, in further
 " Execution of the said Commission, and by Force
 " and Virtue thereof, and of the Statutes therein
 " mentioned, and for and in Consideration of the
 " Sum of five Shillings, of lawful Money of *Great*
 " *Britain*, to them the said Commissioners, in
 " Hand well and truly paid, by them the said *John*
 " *Partridge* and *Charles Dennis*, at or before the
 " Sealing and Delivery of these Presents, the Re-
 " ceipt whereof is hereby acknowledged, and also
 " in Consideration of the Covenants and Agree-
 " ments herein after contained, on the Parts and
 " Behalves of them the said *John Partridge* and
 " *Charles Dennis*, their Heirs, Executors, Admini-
 " strators and Assigns, to be kept, done and per-
 " formed, HAVE ordered, granted, bargained and
 " sold, and by these Presents (as much as in them
 " the said Commissioners, Parties to these Presents
 " lie, and they lawfully may) Do order, grant,
 " bargain and sell unto them the said *John Par-*
 " *tridge* and *Charles Dennis*, their Heirs, and As-
 " signs, ALL the said Bankrupt's Messuages,
 " Lands, Tenements and Hereditaments, AND
 " ALSO all the Estate, Right, Title, Interest,
 " Use, Trust, Property, Possession, Benefit, Equity
 " of Redemption, Claim and Demand whatso-
 " ever, which he the said *Francis Gibbons* at the
 " Time of his becoming Bankrupt as aforesaid
 " had

" had of, in, or to all and singular the said Mes-
 " suages, Lands, Tenements, Hereditaments, and
 " all and singular other the Premisses herein be-
 " fore mentioned, and hereby ordered, granted,
 " bargained and sold, or mentioned, or intended
 " so to be, with their, and every of their Appur-
 " tenances. AND ALSO all other Messuages, Lands,
 " Tenements, and Hereditaments whatsoever and
 " wheresoever, which he the said *Francis Gibbons*
 " hath purchased or obtained for Money, or other
 " Recompence jointly with his Wife, Children or
 " Child, to the only Use of him the said *Francis*
 " *Gibbons*, AND ALSO all such Use, Estate, Inte-
 " rest, Right and Title whatsoever, which he the
 " said *Francis Gibbons* had of, in, or to any Mes-
 " suages, Lands, Tenements and Hereditaments
 " whatsoever, at the time he became Bankrupt
 " as aforesaid, which he could depart withal, AND
 " all and singular other the Premisses herein be-
 " fore bargained and sold, or mentioned or in-
 " tended so to be, TO HAVE AND TO HOLD ALL
 " and singular the said Messuages, Lands, Tene-
 " ments and Hereditaments, with their and every
 " of their Appurtenances, unto them the said
 " *John Partridge* and *Charles Dennis*, their Heirs
 " and Assigns, to and for the only proper Benefit
 " and Advantage of them the said *John Partridge*
 " and *Charles Dennis*, their Heirs and Assigns for
 " ever, or according to the said *Francis Gibbons*,
 " his Right and Interest therein, subject to such
 " Mortgage or Mortgages or other Charges and
 " Incumbrances (if any such there be) as the
 " same are legally charged with and liable to. IN
 " TRUST NEVERTHELESS for the Benefit and Ad-
 " vantage of them the said *John Partridge* and
 " *Charles Dennis*, and all and every other the Cre-
 " ditors of the said *Francis Gibbons*, who already
 " have

" have come in and sought Relief, or shall here-
 " after in due Time come in and seek Relief by
 " Virtue of the said Commission, or any renewed
 " Commission, against the said *Francis Gibbons*
 " and duly prove and ascertain their several and
 " respective Debts under the same, according to
 " the Directions and Limitations of the said Sta-
 " tutes, and as to the Overplus, if any shall be,
 " after Payment and Satisfaction of all such Debt
 " or Debts, as shall or may be proved under the
 " said Commission, or any renewed Commission,
 " against the said *Francis Gibbons*, and the Charges
 " of suing forth and prosecuting the same IN
 " TRUST for the said *Francis Gibbons* his Heirs or
 " Assigns, according to the Statutes, and the true
 " Intent and Meaning thereof. AND the said
 " *John Partridge* and *Charles Dennis*, each of them
 " for himself separate and apart, and for his own
 " Heirs, Executors and Administrators, Acts, and
 " Deeds only, and not either of them for the
 " other of them, his Heirs, Executors or Admini-
 " strators, Acts or Deeds, do hereby severally and
 " respectively (g) covenant, promise and agree,
 " to and with the said Commissioners, Parties
 " hereto by these Presents in manner following,
 " that is to say, that each of them the said *John*
 " *Partridge* and *Charles Dennis* respectively, and
 " their Heirs and Assigns, shall and will with all
 " convenient speed, use their best Endeavours, by
 " Suits at Law or otherwise, to recover and get
 " Possession of the said Messuages, Lands, Tene-
 " ments and Hereditaments, and shall and will
 " after Recovery and Possession had of the same,

(g) Or thus: for himself severally, and not jointly one for the
 other, or one for the Heirs, Executors, or Administrators, or for
 the Act or Deed of the other, doth covenant, &c.

" or

“ or any Part thereof, make Sale and Disposition
 “ thereof, with the like convenient Speed, to and
 “ for the most Money and best Price, he or they
 “ can or may *bonâ Fide* obtain for the same. AND
 “ FURTHER that they the said *John Partridge* and
 “ *Charles Dennis*, their Heirs, Executors and Ad-
 “ ministrators, shall and will from Time to Time,
 “ and at all Times hereafter, upon reasonable
 “ Request or Notice to them given for that Pur-
 “ pose, under the Hands of the Commissioners by
 “ the said Commission, or any renewed Commis-
 “ sion authorized as aforesaid, or the major Part
 “ of them, render and give unto the said Com-
 “ missioners, by the said Commission, or any re-
 “ newed Commission, authorized as aforesaid, or
 “ the major Part of them, a just and true account
 “ of all and every such Sum and Sums of Money,
 “ or other Satisfaction, which they the said *John*
 “ *Partridge* and *Charles Dennis*, their Heirs, Ex-
 “ cutors or Administrators respectively, shall or
 “ may have received, obtained, or raised by Virtue
 “ of these Presents, or by Means of this present
 “ Deed of Bargain and Sale, out of the said
 “ *Francis Gibbons's* Estate hereby bargained and
 “ sold, and all such Monies or other Satisfaction,
 “ as shall appear to be so by them respectively
 “ received, had, obtained or raised by them as
 “ aforesaid, they the said *John Partridge* and *Charles*
 “ *Dennis* shall and will (after all just Allowances
 “ thereout deducted) upon the like reasonable Re-
 “ quest, well and truly pay, satisfy and render, or
 “ cause to be paid, satisfied and rendered, to them
 “ the said Commissioners, authorized, or the major
 “ Part of them, or as they or the major Part of
 “ them, shall direct or appoint under their Hands.
 “ TO THE END the same Monies or other Satis-
 “ faction, may be by them the said Commissioners,
 “ in

" in and by the said Commission, or any renewed
 " Commission authorized, or the major Part of
 " them, ordered, disposed, distributed and divided,
 " unto and amongst, all and every the Creditors
 " of the said *Francis Gibbons* who have already
 " come in and sought Relief, or shall hereafter
 " in due Time come in and seek Relief, by Virtue
 " of the said Commission, according to the Limi-
 " tations of the said Statutes, therein mentioned
 " as aforesaid, to the End the same Monies and
 " other Satisfaction may be answered and paid to
 " the Creditors seeking Relief as aforesaid, pro-
 " portionably according to their several Debts
 " due and owing to them respectively, from the
 " said *Francis Gibbons*, according to the Order of
 " Dividend to be made by the said Commissioners
 " of the same, and until such Monies shall be so
 " disposed of, and divided, shall and will pay and
 " deposit the same into the Hands of Sir *Richard*
 " *Glynn, &c.* [*as in Assignment*] [*Covenant from*
 " *the Assignees to indemnify the Commissioners as in*
 " *Assignment. Fol. 343.*] IN WITNESS, &c."

Memorandum of executing Bargain and Sale.

" Be it remembered, That we the major Part of
 " the Commissioners, named and authorized, in
 " and by a Commission of Bankrupt, awarded
 " and issued against *Francis Gibbons*, of &c. whose
 " Names are hereunto subscribed, met the Day
 " and Year, and at the Place above mentioned,
 " and examined and executed a Bargain and Sale
 " of the said Bankrupt's real Estate to *John Par-*
 " *tridge*, of &c. and *Charles Dennis*, of &c. the
 " Assignees duly chosen by the Creditors under
 " the said Commission."

Thomas Nugent.

Richard Wood.

Thomas Life.

If the Bankrupt's real Estate is conveyed to Assignees, and one of them dies, this is a Jointenancy, and goes to the Survivor; and he alone may sell such Estate to a Purchaser; but if both die before any Conveyance is made, then the Heir at Law of the Survivor must convey to such new Assignees, as the Court shall appoint, or join with such new Assignees in the Conveyance to a Purchaser.

The Bargain and Sale, after it has been executed by the Commissioners, must be (b) inrolled in some Court of Record at *Westminster*, within (i) six Months after the Date of the Deed.

The Courts of Record in which it is generally inrolled are the *Chancery*, *King's Bench*, *Common Pleas*, and *Exchequer*.

If it is to be inrolled in *Chancery*, one of the Commissioners who executed the Bargain and Sale must acknowledge it before a Master, either at the public Office, or at the Master's House; if in the *King's Bench*, *Common Pleas*, or *Exchequer*, before a Judge or Baron at his Chambers or House; or in the respective Courts.

When the same is acknowledged, the Acknowledgement thereof must be wrote at the Bottom, or on the Margin of the Deed, in this Form:

"This Indenture was acknowledged by *Thomas Nugent*, Esquire, therein mentioned, who prayed that the same might be inrolled, on the Day of *June* 1767, before"

"*Richard Edwards*."

(b) The Assignees cannot maintain an Action concerning the Bankrupt's real Estate, till the Bargain and Sale is inrolled. See fol. 189. Note (m).

(i) By Stat. 27 H. 8. c. 16. S. 1.

This Acknowledgment must be signed by the Master or Judge, and then the Deed must be engrossed on Rolls of the Court; when acknowledged in *Chancery*, you take the Deed to the Clerk of the Inrolments, whose Office is under the *Chancery Office*, in *Chanery Lane*, he provides Rolls and inrols the Deed without giving you any Trouble, except taking the Deed to and from the Office when enrolled, and the Certificate endorsed thereon.

If you intend to inroll the Deed in the Court of *King's Bench*, you must get as many Rolls as are necessary for your Purpose, of *Billingfley*, Stationer, in *Chancery Lane*, and when you have entered the Deed on the Roll, prefixing such one of the following Preambles as may suit the Acknowledgment, you docket the Rolls with the Clerk of the Dockets in the *King's Bench Office*, for which Purpose you must make a Docket to the following Effect, viz.

Trinity Term, in the seventh Year of the Reign of King George the Third.

Entries of *James Browne*, Gentleman, one of the Attornies, &c.

An Indenture dated, &c. between *Thomas Nugent*, Esquire, *Richard Wood*, and *Thomas Life*, Gentlemen, of the one Part, and *John Partridge*, of &c. and *Charles Dennis*, of &c. of the other Part. Roll. 1001.

This Officer also indorses a Certificate on the Deed, which done, he returns it to you, on paying at the Rate of three-pence a Folio [72 Words] and one Shilling for the Certificate.

The Rolls being properly dockette, you carry them to Mr *Philips*, at the *King's Bench Office*, or at the *Nisi Prius Office*, *Gray's Inn*, whom you pay about four Shillings.

Preambles.

Preambles.

The Preamble of the Inrollment of a Deed, when the same is acknowledged in the Court of King's Bench.

“ As yet of *Easter Term* (as the Term shall be)
“ Witness *William Lord Mansfield*.

“ *England*, to wit, { Be it remembered, that on
“ *Wednesday next*, after 15 Days
“ of *Easter* in this same Term,
“ before our Lord the King at *Westminster*, came
“ *Thomas Nugent*, Esquire, in his proper Per-
“ son, and brought here into the Court of our
“ said Lord the King, then there, a certain In-
“ denture, which he acknowledged to be his
“ Deed, and prayed that the same Indenture, as
“ his Deed, might be enrolled of Record, before
“ our said Lord the King, at *Westminster*; and it
“ is inrolled in the following Words: To wit;
“ This Indenture, &c. (the Deed *verbatim*.)”

*The Preamble where the Indenture is acknowledged
before the Chief Justice at his Chambers.*

“ *England*, to wit, { Be it remembered, That on,
“ &c. in this same Term, be-
“ fore our Lord the King at
“ *Westminster*, *William Lord Mansfield*, Chief Ju-
“ stice of our said Lord the King, assigned to hold
“ Pleas, before the King himself, records, that on
“ the Day of last past, *Thomas*
“ *Nugent*, Esquire, in his own proper Person,
“ came before the said Chief Justice at his Cham-
“ bers, situate in *Serjeant's Inn*, in *Chancery Lane*,
“ and brought before the said Chief Justice, then
“ there,

“ there, a certain Indenture, which he acknow-
 “ ledged to be his Deed, and prayed that the said
 “ Indenture, as his Deed, might be enrolled of
 “ Record, in the Court of our said Lord the
 “ King, before the King himself, at *Westminster*;
 “ and which said Indenture the aforesaid Chief
 “ Justice, by his own proper Hands, now delivers
 “ here into Court, to be inrolled in Form afore-
 “ said; and it is inrolled in the following Words:
 “ to wit; This Indenture, &c.”

The Certificate to be endorsed on the Deed
 inrolled.

*Thomas Nugent, Esquire, and others, to John
 Partridge and Charles Dennis.*

“ Inrolled in the Court of our Lord the King,
 “ himself at *Westminster*, of *Trinity Term* (*as the
 “ Term is*) in the *seventh Year* of the Reign of
 “ our Sovereign Lord *George the Third*, King of
 “ *Great Britain, &c.*”
 Rol. 1001.

If the Deed is to be inrolled in the *Common
 Pleas*, you get the Rolls from the Clerk of the
 Warrants, whose Office is No. *Clifford's Inn*,
 and having engrossed them yourself, and left a
 Space for prefixing the Preamble, which is done
 by you by the Direction of the Clerk of the War-
 rants, you take them to him, whom you pay at
 the Rate of three Pence a Sheet or Folio [72
 Words] and one Shilling for the Certificate he
 endorses on the Deed; and requires no Docket.

If the Inrollment is to be in the *Exchequer*, you
 carry the Deed to your Clerk in Court, who finds
 Rolls and inrolls it for you.

In Case the Bankrupt happens to be in Prison,
 on mesne Process only, (for if he is in Execution,

the Commissioners must attend him there) it may be proper to get the Commissioners to sign their Warrant directed to the Keeper of the Prison, to bring the Bankrupt before them at the next Sitting, in order to take his Surrender and last Examination.

The Warrant.

“ WHEREAS a Commission of Bankrupt hath
 “ been awarded and issued against *Francis Gibbons*,
 “ of &c. directed to us whose Names are hereunto
 “ subscribed, and to the other Commissioners in
 “ the said Commission named, and he being de-
 “ clared Bankrupt, and the Day of
 “ Instant being one of the Days appointed in the
 “ *London Gazette* for the said *Francis Gibbons* to
 “ surrender himself to the said Commissioners,
 “ and we being informed that the said *Francis*
 “ *Gibbons* is in your Custody upon mesne Process,
 “ and not in Execution: These are therefore to
 “ desire you to bring the Body of the said *Francis*
 “ *Gibbons* before us at *Guildhall*, in the City of
 “ *London*, on next, being the Day
 “ of Instant, at four of the Clock in the
 “ Afternoon, in order to be examined by us, pur-
 “ suant to the Act or Acts of Parliament made
 “ and now in Force concerning Bankrupts; and
 “ this shall be your sufficient Warrant. Given
 “ under our Hands this Day of June 1767.

To *John Ashton*, Esquire,
 Marshal of the King's
 Bench Prison, or to his
 Deputy there.

Thomas Nugent.
Richard Wood.
Thomas Life.

If the Bankrupt happens to be in the *Fleet* Prison, then the Commissioners Warrant must be directed thus; "To *John Eyles*, Esquire, Warden of his Majesty's Prison of the *Fleet*, or to his Deputy there." If he is in *Newgate*, then thus; "To the Sheriff of *Middlesex*, and to *Richard Akerman*, Keeper of his Majesty's Prison of *Newgate*, or to his Deputy there." If in either of the Compters, thus; "To the Sheriffs of *London*, and to _____ Keeper of the *Poultry*, or of *Woodstreet* Compter, or to his Deputy there." If in a County Goal, thus; "To _____ Esquire, Sheriff of the County of _____ and to _____ Keeper of the said County Goal, or to his Deputy there."

As the Bankrupt may not be able to surrender, or be prepared to finish his Examination by the next Sitting, we will direct him how to enlarge the Time for these Purposes.

The Application must be by Petition to the Great Seal, six (k) Days at least, before the last Sitting appointed in the *Gazette*; this Petition may be either in the Name of the Bankrupt, or of his Assignees; the Allegations of which Petitions are various, according to the Circumstances of the Case, we will draw up Forms of both Sorts, and leave the Solicitor to use such of them as in his Judgment and Discretion, best suit his particular Purpose.

(k) By Stat. 5 Geo. 2. c. 30. S. 3.

" In the Matter of " To the Right Honourable
 " *Charles Lord Camden,*
 " *Francis Gibbons,* " Baron of Camden Place,
 " Bankrupt." " in the County of Kent,
 " Lord High Chancellor
 " of Great Britain."

" The humble Petition of *Francis Gibbons,*
 Bankrupt,

 " Sheweth,

" That a Commission of Bankrupt under the
 " Great Seal of Great Britain, bearing Date at
 " *Westminster* the Day of *May* last, upon
 " the Petition of *Charles Jones* of *High Holborn*, in
 " the County of *Middlesex*, Mercer, was awarded
 " and issued against your Petitioner, by the Name
 " and Description of *Francis Gibbons*, of the City
 " of *London*, Merchant, which Commission was
 " directed to *Thomas Nugent, John Fenshawe, Es-*
 " quires, *Champion Branfil, Richard Wood*, and
 " *Thomas Life*, Gentlemen, as Commissioners to
 " execute the same.

" That your Petitioner hath been declared
 " Bankrupt by the major Part of the said Com-
 " missioners acting under the said Commission,
 " and by Summouce under their Hands, and also
 " by Notice in the *London Gazette* of *Tuesday* the
 " Day of *May* 1767, was required to
 " surrender himself to the said Commissioners, or
 " the major Part of them, at *Guildhall, London*,
 " to be examined by them on the 10th and 20th
 " Days of the said Month of *June* respectively, at
 " four of the Clock in the Afternoon, on each of
 " the said Days, touching the Disclosure and
 " Discovery of his Estate and Effects, and on the
 " 5th

“ 5th Day of *July* last, your Petitioner was by
 “ such Summance and Notice, required to finish
 “ his Examination, under the said Commis-
 “ sion.

“ That your Petitioner did surrender himself
 “ to the said Commissioners on the said 10th and
 “ 20th Days of *June* last, and submitted to be
 “ examined touching the Disclosure and Disco-
 “ very of his Estate and Effects, and to conform
 “ himself to the several Acts of Parliament
 “ made, and now in Force, concerning Bank-
 “ rupts.

“ That your Petitioner is preparing and set-
 “ ting his Affairs in order to make a full and true
 “ Disclosure and Discovery of all his Estate and
 “ Effects, but your Petitioner finds his Accounts
 “ so very long, intricate and perplexed, that he
 “ cannot possibly finish the same, by the Time
 “ limited by the said Commissioners Summance
 “ and Notice respectively, for that Purpose.

Or thus :

“ THAT your Petitioner is ready to surrender
 “ himself to the major Part of the Commissioners
 “ in the said Commission named and authorized,
 “ on the *fifth* Day of *July* Instant, at *Guildball*,
 “ *London*, and then and there to make a full Dis-
 “ closure and Discovery of all his Estate and
 “ Effects, but one of the said Commissioners be-
 “ ing in a bad State of Health, so that he cannot
 “ attend to take your Petitioner’s last Examina-
 “ tion, and two others of the said Commissioners
 “ being in the Country, so far remote from *Lon-*
 “ *don*, that they cannot be had in due Time to
 “ take such Examination, it becomes necessary

“ for your Petitioner to have his Time enlarged
 “ for that Purpose.

June 1767.

“ Be it as prayed,
 “ hereof give (1)
 “ Notice to the
 “ Commissioners
 “ forthwith.

Camden, C.”

“ Your Petitioner, therefore,
 “ most humbly prays your
 “ Lordship would be pleased
 “ to order, that the Time
 “ for your Petitioner’s sur-
 “ rendering himself to the
 “ Commissioners in the said
 “ Commission named, or the
 “ major Part of them, and
 “ for fully disclosing and dis-
 “ covering his Estate and Ef-
 “ fects, and finishing his last
 “ Examination under the said
 “ Commission, as the Law in
 “ such Case requires, be en-
 “ larged for the Space of
 “ forty nine Days, to be com-
 “ puted from the Day of
 “ 1767.

“ And your Petitioner (as in Duty
 “ bound) shall ever pray, &c.”

It has been thought advisable, (but we do not think it at all necessary) for the Bankrupt *not* to surrender himself *till* the *Expiration of his enlarged Time*, in Case he conceives the Commission to be injurious to him, or taken out illegally, in this Case after the Allegation that the Commission is issued, and Party declared Bankrupt thereon, and of the several Days and Times for his Surrender, to add the following Allegations, viz.

(1) That is, by personally delivering to the Commissioners, or leaving at their respective Houses or Places of Abode, an examined and true Copy of the said Petition, with the Order of the Lord Chancellor thereon.

“ That

"That no Debt is due to the petitioning Creditor."

"That your Petitioner preferred his Petition to your Lordship, praying that the said Commission might be superseded, whereon many Affidavits were filed, but such Petition was dismissed without Prejudice."

"That your Petitioner, hoping that such Commission would be superseded, hath not perfectly adjusted his Affairs."

Or thus :

"That your Petitioner having obtained your Lordship's Leave to bring an Action at Law to try the Validity of the petitioning Creditor's Debt, and of the Act of Bankruptcy, pretended to have been committed by your Petitioner, for that Reason hath not yet surrendered himself, in order to be examined by, and before the said Commissioners, touching the Disclosure and Discovery of his Estate and Effects under the said Commission."

"In the Matter of "To the Right Honourable, &c. [as in the other
"Francis Gibbons, "Petition.]"
"Bankrupt."

The humble Petition of John Partridge [sole Assignee if so] and Charles Dennis, Assignees of the Estate and Effects of the said Bankrupt.

Sheweth,

"That [here set out the issuing of the Commission, the declaring Party Bankrupt, and
R 4 "the

“ the Days and Times for his Surrender, as in
 “ the other Petition, only saying, instead of your
 “ Petitioner” “ the said Bankrupt,” and then]
 “ That the said Bankrupt, (or the said *Francis*
 “ *Gibbons*) hath not yet surrendered himself to the
 “ Commissioners in the said Commission named,
 “ or to the major Part of them, at the said two
 “ first Sittings already had under the said Com-
 “ mission, and the said Bankrupt is now at *Paris*,
 “ in the Kingdom of *France*, and intends to sur-
 “ render himself to the said Commission, as your
 “ Petitioners are informed, but will not be able
 “ to arrive in *London* by the 5th Day of *July*.”

Or thus :

“ That your Petitioners have been duly chosen
 “ Assignees of the Estate and Effects of the said
 “ Bankrupt, and find that the said Bankrupt is
 “ in an ill State of Health, and a Prisoner in the
 “ *Fleet*, and is not prepared to finish his Exami-
 “ nation, in the Time limited for that Purpose,
 “ in the manner prescribed, by the Act of Parlia-
 “ ment, in that Case made and provided, there-
 “ fore hath not as yet surrendered himself to the
 “ said Commissioners, which he purposes to do
 “ as your Petitioners are informed, as soon as his
 “ said Examination can be prepared.”

In Case the Bankrupt hath already had Time,
 but not the full *forty-nine* Days, then you set
 forth the Commission, the Commissioner's De-
 claration of the Bankruptcy, the Times for Sur-
 render, (as before), and then the last Order for
 Time, thus,

“ That the said Bankrupt being then in an ill
 “ State of Health, and a Prisoner in the *Fleet*,
 “ and not being then prepared to finish his Ex-
 “ amination

"amination, your Petitioners, who have been
 "duly chosen Assignees of the said Bankrupt's
 "Estate and Effects, on the Day of
 "last preferred their Petition to your Lordship,
 "and obtained an Order thereon, for forty Days
 "further Time to be computed from the
 "Day of for the said Bankrupt to surrender
 "himself, and finish his Examination."
 "That your Petitioners find that the said
 "Bankrupt by Reason of his ill State of Health,
 "as aforesaid, hath not yet been able to prepare
 "and compleat his Examination, and in as much
 "as the Time granted by your Lordship, for the
 "said Bankrupt to finish his Examination will
 "expire on the Day of next;"

Day of 1767.
 Let the Time for the said
Francis Gibbons the Bank-
 rupt, his surrendering him-
 self to the Commissioners in
 the said Commission named,
 or the major Part of them,
 and for disclosing and disco-
 vering his Estate and Effects,
 and finishing his Examina-
 tion before them, be further
 enlarged for the Space of ten
 Days, to be computed from
 the Day of next;
 hereof give Notice to the
 Commissioners forthwith.

Camden, C.

"Your Petitioner therefore most
 "humbly prays your Lordship, that
 "the Time for the said Bankrupt,
 "his surrendering himself, and dis-
 "closing his Estate and Effects,
 "to the acting Commissioners, in
 "the said Commission named and
 "authorized, and for his finishing
 "his Examination before them,
 "may be further enlarged for the
 "Space of ten Days, to be com-
 "puted from the said Day
 "of next.

"And your Petitioner shall
 "ever pray, &c.

Affidavit of the Service of a Petition.

In the Matter of *Francis
 Gibbons*, Bankrupt

"*Robert Richardson*, of, &c. Gentleman, mak-
 "eth Oath, that he this Deponent did, on the
 "Day of serve *Thomas Nugent*
 "and

“ and *John Fenshaw*, Esquires, and on the
 “ Day of *Thomas Life*, Gentleman, with
 “ a Petition preferred by *John Partridge* and
 “ *Charles Dennis*, Assignees of the Estate and Ef-
 “ fects of the said *Francis Gibbons* the Bankrupt in
 “ this Matter, to the Right Honourable the
 “ Lord Chancellor, with his Lordship’s Order
 “ thereon, bearing Date the Day of the
 “ said Month of whereby it was or-
 “ dered, that the Time for the said *Francis Gib-*
 “ *bons* the Bankrupt’s surrendering himself to the
 “ Commissioners, in the said Commission named,
 “ or the major Part of them, and disclosing and
 “ discovering his Estate and Effects, and finish-
 “ ing his last Examination, be further enlarged
 “ for the Space of ten Days, to be computed
 “ from the Day of next, (where-
 “ of Notice was forthwith to be given,) in
 “ Manner following; that is to say, by personal-
 “ ly delivering to the said *Thomas Nugent* and
 “ *John Fenshaw* respectively, a true Copy of the
 “ said Petition, and Order thereon; and at the
 “ same Time shewing them respectively the said
 “ original Petition and Order thereon, and by
 “ leaving another true Copy of the said Petition
 “ and Order thereon, at the House of the said
 “ *Thomas Life* in *Basinghall Street*, London, with his
 “ Clerk, Agent or Partner there; and at the
 “ same Time shewing such Clerk, &c. the said
 “ original Petition, and Order thereon. And
 “ this Deponent further saith, that the said
 “ *Thomas Nugent*, *John Fenshaw*, and *Thomas Life*,
 “ are the acting Commissioners, under the said
 “ Commission, as this Deponent hath been in-
 “ formed, and believes.”

Sworn at the Public Office

in *Symmonds-Inn*, this

Day of

before me

Robert Richardson.

Lord

Lord Chancellor (m) *Hardwicke* by no Means liked the Practice which he said was what Attorneys in the Country were very apt to fall into, in drawing an Affidavit of the Service of this Petition, viz. to recite therein the whole Petition *verbatim* in order to swell up the Expence, but that if they made a Custom of it, he should, for the future, order the Costs of the Affidavit to come out of their own Pockets.

Notice of the Enlargement of the Bankrupt's Time must be given in the *Gazette*.

Third Sitting at Guildhall.

As Creditors may prove or claim Debts at this Sitting also, the Solicitor will take Care to be provided with some printed Depositions in Blank, but the chief Business of this Sitting is for the Commissioners to take the Bankrupt's last Examination; we will suppose that the Bankrupt has obtained an Order for further Time, and that the Commissioners have been duly served therewith; if so, the following *Memorandum* seems proper.

Memorandum of the Bankrupt's having enlarged his Time for surrendering, and making a full Disclosure and Discovery of his Estate and Effects.

At, &c.

"Be it remembered, that this being the Day appointed, pursuant to Notice in the *London Gazette*, for *Francis Gibbons*, of, &c. the Person

(m) 4th. Rep. 139. pl. 79.

R 6

" against

“ against whom the Commission of Bankrupt, now
 “ in Prosecution, is awarded and issued, to surren-
 “ der himself, and to make a full Disclosure and
 “ Discovery of his Estate and Effects, and to finish
 “ his Examination under the said Commission,
 “ we, whose Names are hereunto subscribed,
 “ being the major Part of the Commissioners
 “ in and by the said Commission named and
 “ authorized, met the Day and Year, and at
 “ the Place above-mentioned, pursuant to such
 “ Notice; at which Time a Petition from the
 “ said Bankrupt, (or from the Assignees on Be-
 “ half of the said Bankrupt,) preferred to the
 “ Right Honourable *Charles Lord Camden*, Baron
 “ of *Camden Place*, in the County of *Kent*, Lord
 “ High Chancellor of *Great Britain*, praying
 “ that his (or the said Bankrupt’s) Time for sur-
 “ rendering himself, and making a full Disclo-
 “ sure and Discovery of his Estate and Effects,
 “ and to finish his Examination, might be
 “ enlarged (or further enlarged) for the Space
 “ of Days, to be computed from this
 “ Day of Instant, with his
 “ Lordship’s Order thereon for that Purpose,
 “ bearing Date the Day of
 “ last; was produced to (having been before
 “ served on, or served on) us the said Commis-
 “ sioners; we the said Commissioners do there-
 “ fore defer taking such Examination till the
 “ said Day of next; and we
 “ do hereby accordingly adjourn to that Day,
 “ at this Place, at o’Clock in the After-
 “ noon of the same Day for that Purpose.

Thomas Nugent.
Champion Branfil.
Thomas Life.

If

If the Bankrupt happens to be a Prisoner, then you prepare a *Memorandum* of the Commissioners adjourning to the Prison, in order to take his Examination.

At, &c.

“*MEMORANDUM*, that we, whose Names are hereunto subscribed, being the major Part of the Commissioners named and authorized in and by a Commission of Bankrupt awarded and issued against *Francis Gibbons*, of, &c. met here the Day and Year abovementioned, pursuant to Notice in the *London Gazette*, in order to finish the said Bankrupt's last Examination; but the said Bankrupt being a Prisoner in the King's Bench Prison in Execution (or in a very ill State of Health, and not able to attend here to be examined :) We do therefore adjourn to the said Prison of the King's Bench, to take the said Bankrupt's Examination.”

Champion Branfil.

Richard Wood.

Thomas Life.

Memorandum of the Bankrupt's Examination and Discovery.

At the King's Bench Prison, in St. George's Fields, in the County of Surry, by Adjournment from Guildhall, London, the Day of 1767.

Champion Branfil. “*Memorandum*, that *Francis Gibbons* and *Adam Pierce* of, &c. the Persons against whom the Commission of Bankrupt now in Prosecution, is awarded and issued, appearing (again) before us the
“major

If

"major Part of the Commissioners in the said
 "Commission named and authorized, in order
 "to finish their Examinations pursuant to Notice
 "in the *London Gazette*, for that Purpose given,
 "and being now sworn and examined, they
 "speaking for themselves respectively [or "each
 "speaking for himself"] upon their Oaths say,
 "that the several Books (n) of Account, num-
 "bered respectively 1. 2. &c. and respectively
 "signed by these Examinants, and the several
 "Paper (o) Writings hereunto annexed, marked
 "respectively with the Letters (A) (B) &c. and
 "also respectively signed by these Examinants
 "under each Column, and delivered by these Ex-
 "aminants, or one of them, at the Time of this
 "their Examinations, and exhibited unto the major
 "Part of the Commissioners, in the said Com-
 "mission named and authorized, together with
 "the Household Goods, Utensils, Stocks in Trade
 "Estates and Effects seized and taken by the Mes-
 "senger, and now in the Possession of the Affig-
 "nees chosen under the said Commission, or one
 "of them, and also Rings, and in Monies,
 "now delivered up by this Examinant *Francis*
Gibbons, and Rings, a gold Watch and
 "in Monies, now also delivered up by this Ex-
 "aminant *Adam Pierce*, to the said Commissioners,
 "do contain a full and true Disclosure and Dis-
 "covery of all these Examinants, and of either
 "of their Estate and Effects, both real and per-

(n) The Bankrupt Accounts should be drawn up clear and sa-
 tisfactory, and delivered up by them at the Time of their Exami-
 nations, to the Assignees, (whose Duty it is to attend this Sitting
 for that and other Purposes) the said Accounts being first exhibited
 to, and signed by the Commissioners.

(o) Which must be delivered up by the Bankrupts to be filed
 among the Proceedings, being first exhibited to, and signed by the
 Commissioner.

"sonal,

Richard Wood. "sonal, and how, and in what
 "Manner, to whom, and upon
 "what Consideration, and at
 "what Time or Times they, or either of them,
 "have or hath disposed of, assigned, or trans-
 "ferred any of his Goods, Wares, Merchandizes,
 "Monies or other Estate and Effects, (and all
 "Books, Papers and Writings, relating thereun-
 "to,) of which they or either of them was or
 "were possessed, or in or to which they or either
 "of them was or were any way interested or in-
 "titled, or which any Person or Persons had, or
 "hath, or have in Trust for them, or either of
 "them, or for their, or either of their Use, at
 "any Time before or after the issuing of the said
 "Commission, or whereby they these Examinants
 "or either of them, their or either of their Fa-
 "milies, hath or have, or may have, or expect,
 "any Profit, Possibility of Profit, Benefit or Ad-
 "vantage whatsoever, except only such Part of
 "their Estates and Effects as have been really,
 "and *bonâ Fide* before sold, or disposed of, in the
 "way of their Trades and Dealings, and except
 "such Sums of Money, as have been laid out in
 "the ordinary Expence of themselves and Fami-
 "lies. And these Examinants further say, that
 "at the Time of their former Examinations, and
 "at this the Time of their last Examinations,
 "they have respectively delivered up to the said
 "Commissioners, or the major Part of them, all
 "such Part of their these Examinants Goods,
 "Wares, Merchandizes, Monies, Estates and Ef-
 "fects, and all Books, Papers and Writings, re-
 "lating thereunto, as at the Time of such their
 "former Examinations were, or now are in their
 "or either of their Possessions, Custodies, or Pow-
 "ers, (the necessary wearing Apparel of these
 "Examinants,

“Examinants, and of their Wives and Children
 “only excepted,) And these Examinants further
 “say, that they have not, nor hath either of them,
 “to the Knowledge or Belief of the other of them,
 “removed, concealed or imbezelled, any Part
 “of their or either of their Estates, real, or per-
 “sonal, or any Books of Account, Papers or
 “Writings relating thereto with
Thomas Life. “Intent to defraud their or
 “either of their Creditors.”

*Francis Gibbons.
 Adam Pierce.*

It is usual for the Commissioners to recommend,
 and the Creditors to agree to return the Bankrupts
 their Rings, Monies, &c. particularly the Jewels,
 &c. of their Wives; upon which Occasion the
 following *Memorandum* seems proper to be added
 to the above.

“BE IT REMEMBERED; that by the Consent
 “of the Assignees and Creditors present, the
 “abovementioned Rings, Monies and Watches
 “were re-delivered to the Bankrupts.”

Copy of Perrott's Warrant of Commitment.

At Guildhall, London, 19th April, 1760.

Whereas his Majesty's Commission under the
 Great Seal of Great Britain, bearing Date
 at *Westminster*, the 19th Day of *January* last
 past, grounded upon the several Statutes made
 concerning Bankrupts, hath been awarded and
 issued against *John Perrott* of *Ludgate-Hill, Lon-*
don, Merchant, directed unto us, who have here-
 unto subscribed our Names and set our Seals:
 Who have also respectively taken the Oath ap-
 pointed

pointed by an Act of Parliament, passed in the fifth Year of his present Majesty's Reign, intituled, "*An (p) Act for the better preventing Frauds committed by Bankrupts,*" for Commissioners of Bankrupts to take before they act as Commissioners, in the Execution of the Powers or Authorities, given and granted, by the said Act or Acts of Parliament now in Force concerning Bankrupts, and to *Charles Nelson Cole*, Esq. and *Arthur Trollope*, Gentleman, being the major Part of the Commissioners named to execute the said Commission; and it having appeared to the major Part of the said Commissioners in the said Commission named and authorized, upon good and sufficient Proof, upon Oath, that the said *John Perrott* hath, from the Month of July, 1758, carried on the Trade and Business of a Merchant, in his House on *Ludgate-Hill* aforesaid, by buying and selling Linens, Lace, and other Wares and Merchandizes, and by exporting and importing divers and sundry Kind of Goods, and hath thereby sought, and endeavoured to get his Living as other Merchants usually do; and in the Course of his said Trading and Dealing, he became indebted unto *William Hewitt*, of *Newgate Street*, *London*, Warehouseman, in the Sum of 100*l.* and upwards, for Goods sold and delivered; and also have found upon good Proof, upon Oath, that the said *John Perrott* did, before the Date and suing forth of the said Commission, become a Bankrupt, within the true Intent and Meaning of the several Statutes made, and now in Force concerning Bankrupts, some one of them. And they did adjudge and declare him a Bankrupt accordingly.

(p) This Act is misrecited. See our Remarks hereon in fol. 217.

And

And whereas the major Part of the said Commissioners, did cause Notice to be given in the *London Gazette*, of the 22d Day of *January* last past, that the said *John Perrott*, was thereby required to surrender himself to the said Commissioners in the said Commission named, or the major Part of them, on the 26th of *January*, and on the 4th of *February* last past, and on the 4th Day of *March* last, at four of the Clock in the Afternoon, on each of the said Days, at *Guildhall, London*; and make a full Disclosure and Discovery of his Estate and Effects. And whereas the said *John Perrott* did, on the said 4th Day of *February* last, surrender himself to the major Part of the Commissioners, in the said Commission named and authorised; but being sworn and examined, said that he was not then prepared to make a full Disclosure and Discovery of his Estate and Effects, but prayed Time for the doing thereof, which was granted to him accordingly. And whereas the said *John Perrott* attended the major Part of the said Commissioners, in and by the said Commission named and authorized, on the said 4th Day of *March*, in order to finish his Examination, and to make a full Disclosure and Discovery of his Estate and Effects, but producing to the said Commissioners, an Order of the Right Honourable Sir *Robert Henley*, Knight, *Lord-Keeper* of the *Great Seal of Great Britain*, dated the 28th Day of said *February*, 1760, for enlarging the Time of the said *John Perrott* for disclosing and discovering his Estate, and finishing his Examination for the Space of 46 Days, to be computed from the said 4th of *March*, to this Day. And whereas the said *John Perrott* attended us on this Day, in Pursuance of the said Order, in in order to finish his Examination, and to make a full

a full Disclosure and Discovery of his Estate and Effects, and being then and there duly sworn and required by us to make such Disclosure and Discovery; we, the said Commissioners did cause the following Question in Writing to be propounded to him the said *John Perrott*, (that is to say) "As you do admit that you have spent the last Week, previous to this your Examination, with Mr. *Maynard*, one of your Assignees, to settle and adjust your Accounts, and to draw up a true State thereof, to enable you to close such your Examination; and do likewise admit, that upon such State thereof, it appears, that after giving you Credit for all Sums of Money paid by you, and making you a Debtor for all Goods sold and delivered to you, from your first entring into Trade to the Time of your Bankruptcy, it appears, that there is a Deficiency of the Sum of 13,513*l*. Give a true and particular Account what is become of the same, and how and in what Manner you have applied and disposed thereof. To which Question so put by us, as aforesaid, the said *John Perrott* did willfully and obstinately refuse to give any other than the following general Answer, (that is to say) that on Goods sold this last Year I have lost upwards of 2000*l*. and by Mourninges I have lost upwards of 1000*l*. and that for nine or ten Years I have, I am sorry to say it, been extremely extravagant, and spent large Sums of Money. *John Perrott*. Which Answer of the said *John Perrott*, not being satisfactory to us the said Commissioners. These are therefore to will, require, and authorize, you immediately upon Receipt hereof, to arrest and take into your Custody the Body of the said *John Perrott*, and him safely to convey to his Majesty's Prison

Prison of *Newgate*, and him there to deliver to the *Keeper* of the said *Prison*, who is hereby required and authorized, by Virtue of the *Commission* and *Statutes* aforesaid, to receive the said *John Perrott* into his Custody, and him safely to keep and detain, without *Bail* or *Mainprize*, until such Time as he shall submit himself to us, the said Commissioners, or the major Part of the said Commissioners, by the said *Commission* named and authorized, and full Answer make to our or their Satisfaction, to the Question so put to him by us as aforesaid. And for so doing this shall be your sufficient Warrant. Given under our Hands and Seals at the *Guildhall* of the City of *London*, this 19th Day of *April*, in the Year of our Lord 1760.

To *William Chesshyre*, our
Messenger, or *Robert*
Brown his Assistant.

F. Filmer, (L. S.)

Cr. Lofft, (L. S.)

And

Wm. Crawley, (L. S.)

To *Richard Akerman*,
Keeper of his Majesty's
Prison of *Newgate*, or
to his Deputy there.

If the Bankrupt does not surrender himself to the Commissioners by 12 o'Clock at Night, the Messenger warnes him so to do, by the following Proclamation made by him in the middle of *Guildhall*.

The Proclamation.

" *Francis Gibbons*, *Francis Gibbons*, *Francis Gibbons*, come and surrender yourself forthwith, to
" *John Fenshaw*, *Champion Bransil*, Esquires, and
" *Richard Wood*, Gentleman, his Majesty's acting
" Commissioners, named and authorized, in and
" by a Commission of Bankrupt, awarded and
" issued

“ issued, and now in Prosecution against you,
 “ the said *Francis Gibbons*, the said Commissioners
 “ being now present in the Old Council Cham-
 “ ber, in *Guildhall London*, ready to take your Sur-
 “ render; and this you are not in any wise to
 “ omit on Pain of Death, the Punishment by the
 “ Statute made and now in Force concerning
 “ Bankrupts, in that Case on you the said *Francis*
 “ *Gibbons* inflicted.”

If the Bankrupt does not surrender himself
 after this Proclamation and Warning, then the
 Commissioners sign the following *Memorandum*.

*Memorandum, when the Bankrupt does not
 appear at all.*

“ *Be it remembered*, that we whose Names are
 “ hereunto subscribed, being the major Part of
 “ the Commissioners, named and authorized in
 “ and by a Commission of Bankrupt, awarded and
 “ issued, and now in Prosecution, against *Francis*
 “ *Gibbons* of &c. met together the Day and Year,
 “ and at the Place abovementioned pursuant to
 “ Notice in the *London Gazette* for the said Bank-
 “ rupt to surrender himself to the major Part of
 “ the Commissioners in and by the said Commis-
 “ sion named and authorized, and to make a full
 “ Disclosure and Discovery of all his Estate and
 “ Effects, at which Time and Place the said
 “ *Francis Gibbons* did not surrender himself, accord-
 “ ing to an Act of Parliament, passed in the *fifth*
 “ Year of the Reign of his late Majesty, King
 “ *George the Second*, intituled “ An Act to pre-
 “ vent the committing of Frauds by Bankrupts;”
 “ although we attended in Expectation of such
 “ Surrender, till past *twelve o’Clock* at Night,
 “ and

382 Third Sitting at Guildball.

"and although the said Bankrupt was warned by
"Proclamation to surrender himself."

Champion Branfil.
Richard Wood.
Thomas Life.

"We have observed that the Commissioners seem much displeased at the Bankrupt's endeavouring at this Sitting, to get his Creditors to sign their Consent to the Commissioners certifying the Great Seal of his Conformity, though their own Advertisement in the Gazette expressly says, that "at this Sitting the Bankrupt is required to finish his Examination, and the Creditors are to assent to, or dissent from the Allowance of (p) his Certificate."

Letters of Attorney.

As Creditors may have Occasion to appoint Attornies to act for them in the following Proceedings under the Commission, we will here prepare such an Authority.

Letter of Attorney to sign Consent to the Commissioners certifying the Great Seal that the Bankrupt hath conformed: and to consent to Assignees commencing Suits in Equity, &c. and to receive Dividends.

"KNOW ALL MEN by these Presents that We
"Charles Jones of &c. and John Leigh of &c. Creditors of Francis Gibbons of &c. the Person
"against whom a Commission of Bankrupt is

(p) With great Deference we presume to say that the Word "us" here should be "the Commissioners," for the Creditors of the Bankrupt authorize the Commissioners, and not the Bankrupt, to certify.

"awarded

" awarded and issued, and now in Prosecution;
 " and who have duly proved our respective Debts
 " under the said Commission, HAVE made, ordain-
 " ed; authorized, constituted, and appointed, AND
 " by these Presents do make, ordain, authorize,
 " constitute, appoint and in our Places and Steads
 " respectively put *Samuel Knobbs* of &c. to be our
 " true and lawful Attorney, for us and in our
 " Names respectively to vote in the Choice of any
 " new Assignee or Assignees, of the said Bank-
 " rupt's Estate and Effects, in Case of any Al-
 " teration or Change of the present Assignees. AND
 " ALSO for us and in our Names, Places, and
 " Steads respectively, to consent to the Commis-
 " sioners in and by the said Commission named and
 " authorized, or the major Part of them, signing
 " a Certificate for the said Bankrupt's having the
 " Allowance and Benefit, given to Bankrupts, by
 " an Act of Parliament passed in the *fifth* Year of
 " the Reign of his late Majesty King *George* the
 " *Second*, intituled " An Act to prevent the com-
 " mitting of Frauds by Bankrupts," and that the
 " said Bankrupt may be discharged from his
 " Debts, in Pursuance of the said Act. AND
 " ALSO for us and in our Names respectively
 " to consent, not only to the commencing
 " of any Suit, or Suits in Equity, by the As-
 " signee or Assignees under the said Commis-
 " sion, touching the said Bankrupt's Estate, but
 " also to the submitting of any Dispute or Disfe-
 " rence between such Assignee or Assignee, or
 " any other Person or Persons whatsoever, for or
 " on Account or by Reason or Means of any
 " Matter, Cause, or Thing whatsoever, relating
 " to the said Bankrupt's Estate or Effects, and
 " likewise to such Assignee or Assignees making
 " any Composition with any Person or Persons,
 " Debtors,

“ Debtors, or Accountants to the said Bankrupt,
 “ where the same shall appear necessary and rea-
 “ sonable. AND ALSO for us and in our Names,
 “ Places, and Steads respectively, and for our own
 “ proper Uses and Benefits respectively, to ask,
 “ demand, sue for, and receive of and from the
 “ Assignee or Assignees of the Estate and Effects
 “ of the said Bankrupt, or whom else these Pre-
 “ sents do, shall, or may concern, all and every
 “ such Sum and Sums of Money, as now is or
 “ are, or which shall hereafter become due or
 “ payable to us the said *Charles Jones* and *John Leigh*
 “ respectively, for our respective Dividends or
 “ Shares of the Estate and Effects of the said
 “ Bankrupt, on our said respective Debts duely
 “ proved under the said Commission as aforesaid,
 “ and on Receipt thereof for us and in our Names
 “ to sign, seal, execute, and deliver, all and every
 “ such good and sufficient Receipts, Acquittances,
 “ Releases and Discharges to the said Assignees,
 “ as shall and may be lawful, fit and convenient
 “ to be done, and generally to do all and every
 “ such further and other lawful Act and Deed,
 “ Matters and Things in the Law, for the better
 “ executing and discharging the Power and Au-
 “ thority hereby given, as fully and amply to all
 “ Intents and Purposes, as we ourselves or either
 “ of us might or could do, if personally present,
 “ and did the same; hereby ratifying, allowing,
 “ and confirming, all and whatsoever our said
 “ Attorney shall or may lawfully do, or cause to be
 “ done, in and about the said Premises, for the
 “ better executing the Purposes aforesaid, by Virtue
 “ of these Presents. IN WITNESS whereof we the
 “ said *Charles Jones* and *John Leigh* have to these
 “ Presents set our Hands and Seals this
 “ Day of in the Year of our Lord 1767.”

Certificate.

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Certificate of Conformity.

The Commissioners (q) Certificate to the Great Seal, that the Bankrupt hath conformed, in order to his being discharged from his Debts.

“ To the Right Honourable *Charles*, Lord
 “ *Camden*, Baron of *Camden Place*, in
 “ the County of *Kent*, Lord High
 “ Chancellor of *Great Britain*.

“ We *Thomas Nugent*, *John Fenshaw*, *Champion*
 “ *Branfil*, Esquires, *Richard Wood* and *Thomas Life*,
 “ Gentlemen, or the major Part of us whose
 “ Names are hereunto subscribed and Seals set,
 “ the Commissioners named and authorized in and
 “ by a Commission of Bankrupt awarded and
 “ issued against *Francis Gibbons*, of &c. bearing
 “ Date at *Westminster*, the Day of
 “ in the Year of the Reign of our Sove-
 “ reign Lord *George the Third*, having begun to
 “ put the said Commission in Execution, and
 “ found that the said *Francis Gibbons* did, before
 “ the Date and suing forth of the said Commis-
 “ sion, and since (r) the 14th Day of *May* 1729,

(q) This is usually called “ *The Bankrupt's Certificate*,” but we venture to recommend the Title we have given it above, as the more proper one. See fol. 235.

(r) Stat. 5 Geo. 2. c. 30. S. 1. extends only to such as became Bankrupts after the 14th Day of *May* 1729, who are understood to be those against whom no Commission of Bankrupt was sued out before that Time; and if the Certificate of the Commissioners does not mention the Party to have become Bankrupt after that Time, it ought to be disallowed for that Cause; but it is, however, thought fit and agreed, that before the Certificate be disallowed, some Proof be made by the Creditors of the Party's being Bankrupt before that Time. See the Resolutions of the Judges upon the Statute of 4 & 5 Ann. c. 17. in *Serjeant's Inn*, in *Chancery Lane*, Dec. 3. 1706. Salk. 111. 112. Com. Dig. 539.

S

“ become

“ become Bankrupt within the true Intent and
 “ Meaning of some or one of the Statutes made,
 “ and now in Force concerning Bankrupts, Do
 “ humbly certify to your Lordship, that the said
 “ Bankrupt did, on the Day of in
 “ the Year of our Lord surrender himself to
 “ us, or the major Part of us, pursuant to No-
 “ tice in the *London Gazette*, for that Purpose
 “ given, and did sign or subscribe such Surrender,
 “ and did submit himself to be examined from
 “ Time to Time upon Oath, by and before us,
 “ or the major Part of us, and in all Things did
 “ conform himself to the several Statutes made,
 “ and now in Force concerning Bankrupts, and
 “ particularly to an Act made in the *fifth* Year of
 “ the Reign of his late Majesty King George the
 “ *Second*, intituled, “ An Act to prevent the com-
 “ mitting of Frauds by Bankrupts ;” whereupon
 “ and for the better discovering of the Estate and
 “ Effects of the said Bankrupt, and putting the said
 “ Acts and the said Commission in Execution, we,
 “ or the major Part of us, have had three or more
 “ several Meetings upon the said Commission, for
 “ the Examination of the said Bankrupt, and caused
 “ due Notice to be published in the *London Ga-*
 “ *zette* of the Time and Place, when and where
 “ we intended to meet for taking such Surrender
 “ and Examination, and for the said Bankrupt’s
 “ delivering up his Estate and Effects, and all
 “ Books, Papers and Writings relating thereto,
 “ and for the Creditors of the said Bankrupt to
 “ prove their Debts before us at such Sittings, at
 “ which Sittings the said Bankrupt hath been ex-
 “ amined from Time to Time upon Oath, by and
 “ before us, or the major Part of us, according
 “ to the Directions of the said last mentioned
 “ Act; and we likewise gave Notice in the

“ *London*

“ *London Gazette* of the Time and Place, when
 “ and where we intended to meet for the said
 “ Bankrupt to finish his Examination before us,
 “ and that such of the Creditors who had not
 “ proved their Debts might at such Sitzings prove
 “ the same, and be present at the said Bankrupt’s
 “ finishing his said Examination, and shew Cause
 “ why we should not make this Certificate in or-
 “ der for the said Bankrupt’s being discharged
 “ from *all* (s) his Debts, according to the said last
 “ mentioned Act; AND we further humbly cer-
 “ tify unto your Lordship, that the said Bankrupt
 “ did, at the Time and Place appointed for his
 “ last Examination, attend us or the major Part
 “ of us, and finish his Examination before us,
 “ according to the Directions of the said last men-
 “ tioned Act, and that none of the Creditors of
 “ the said Bankrupt, who have proved their Debts
 “ before us, or the major Part of us, have shewn
 “ any Cause against our making this Certificate;
 “ AND we do further humbly certify unto your
 “ Lordship, that the said Bankrupt hath upon
 “ such his Examination, made a full Discovery of
 “ his Estate and Effects to us, or the major Part
 “ of us, and in all Things conformed himself to
 “ the several Statutes made, and now in Force,
 “ concerning Bankrupts, and particularly accord-
 “ ing to the Directions of the said last mentioned
 “ Act; and that there doth not appear to us any
 “ Reason to doubt of the Truth of such Disco-
 “ very, or that the same is not a full Discovery of
 “ all the Estate and Effects of the said Bankrupt.
 “ AND we further humbly certify unto your Lord-
 “ ship, that the Creditors whose Names or Marks
 “ are hereunto subscribed or set, are full four Parts
 “ in five in (t) Number and (t) Value of the Credi-

(s) See fol. 248.

(t) See fol. 235.

Certificate.

“tors of the above named *Francis Gibbons*, and they
 “are Creditors for not less than twenty Pounds
 “respectively, and have duly proved their Debts
 “under the said Commission. AND lastly, we
 “further humbly certify unto your Lordship, that
 “it doth appear to us upon due (u) Proof, that
 “all the said Creditors have already signed or set
 “their Marks to this Certificate, signifying their
 “Consent to such Allowance as by the said last
 “mentioned Act is made to Bankrupts, and to
 “this our Certificate, and to the said Bankrupt’s
 “Discharge from his Debts, in Pursuance of the
 “said Act. IN WITNESS whereof we, or the
 “major Part of us, have hereunto set our Hands
 “and Seals this Day of in the Year
 “of our Lord 17 .”

Champion Branfil, (L. S.)

Richard Wood, (L. S.)

Thomas Life, (L. S.)

“We the Creditors of the above named *Francis*
 “*Gibbons*, whose Names are hereunto sub-
 “scribed, do testify and declare our Consent to
 “the Commissioners signing and sealing the
 “above Certificate, and that the said Bank-
 “rupt may have such Allowance and Benefit as
 “are given to Bankrupts by the Act of Parlia-
 “ment last above mentioned, and that he be
 “discharged from his Debts in Pursuance of
 “the same Act.”

John Partridge.

Charles Dennis.

John Leigh.

Mary Combes.

Abraham Bentley.

George Adams, for Self and Co.

Thomas Folkes, for Edward Smith,
by Letter of Attorney.

(u) Viz. the following Affidavit of seeing the Creditors sign the Certificate.

If

If a Creditor at large of the Bankrupt should happen to have his Body in Execution at his Suit, at the Time of issuing the Commission, the Commissioners will not admit such Creditor to prove any Debt under the Commission; but yet, if such Creditor is apprehensive that the Bankrupt will, by Reason thereof, obtain his Certificate, and thereby defeat him of his Execution, it is of Course for the Great Seal, upon proper Application, to order the Commissioners to admit such Person a Creditor for the Purpose of assenting to or dissenting from the Commissioner's Certificate of the Bankrupt's Conformity, such Creditor waving all Benefit of Dividends under the said Commission.

The Application to the Great Seal must be by Petition to the following Effect:

“ In the Matter of
Francis Gibbons,
Bankrupt.

To the Right Honourable
Charles Lord Camden, &c.
Lord High Chancellor of
Great Britain.

“ The Humble Petition of *George Campbell, Esq.*
Sheweth,

“ THAT in or about *Hilary* Term now last past, your Petitioner obtained Judgment, in his Majesty's Court of *King's Bench*, at *Westminster*, against the said *Francis Gibbons*, for 5000*l.* Debt, besides Costs of Suit.

“ THAT on or about the Day of now last past, your Petitioner caused the said *Francis Gibbons* to be taken in Execution on the said Judgment, who now remains in the Custody of the Marshal of the *Marshalsea* of the said Court of *King's Bench*, in Execution of the said Judgment at your Petitioner's Suit.

S 3

“ THAT

“ THAT your Petitioner has very great Reason to apprehend that the Commission of Bankrupt awarded and issued, and now in Prosecution against the said *Francis Gibbons*, was taken out merely with a Design, and on Purpose to discharge the said Bankrupt from the said Execution, and by that Means to defraud your Petitioner of his said Debt and Costs.

“ THAT under the Circumstances of this Case, your Petitioner is advised that he cannot be admitted to prove his Debt under the said Commission, without your Lordship's Order for that Purpose, and without your Petitioner waving all Benefit of Dividends made or to be made under the said Commission.

“ Your Petitioner therefore most humbly prays your Lordship, that he may be at Liberty to prove his said Debt under the said Commission, and that he may be admitted a Creditor for what he shall so prove, in order to enable your Petitioner to assent to, or dissent from, the Allowance of the Commissioner's Certificate of the said Bankrupt's Conformity; your Petitioner hereby waving all Benefit of any Dividend already declared or made, or which shall hereafter be declared or made to the Creditors under the said Commission.

And your Petitioner shall ever pray, &c.”

Affidavit

Affidavit of seeing Creditors of Bankrupt sign their Consent to Certificate, to be produced to, and signed by the Commissioners.

In Chancery.

In the Matter of
Francis Gibbons,
Bankrupt.

“ *Peter Quin* of, &c. maketh Oath, that he
“ did see *John Partridge* of &c. [*describe him ac-*
“ *cording to his Addition in the Deposition of his Debt*]
“ *Charles Dennis* of &c. [*the same*] *John Leigh*
“ of &c. [*the same*] severally subscribe their re-
“ spective Names to a Consent, at the Foot of a
“ certain Instrument in Writing, intended to be
“ a Certificate under the Hands and Seals of the
“ major Part of the Commissioners named and
“ authorized in and by a Commission of Bank-
“ rupt awarded and issued out against *Francis*
“ *Gibbons*, of &c. that he the said *Francis Gibbons*
“ hath in all Things conformed himself to the
“ several Statutes made, and now in Force con-
“ cerning Bankrupts, whereby they do severally
“ testify and declare their Consent to the said
“ Commissioners signing and sealing the said Cer-
“ tificate, and that the said Bankrupt may have
“ such Allowance and Benefit as are given to
“ Bankrupts by an Act of Parliament passed in
“ the *fifth* Year of the Reign of his late Majesty
“ King *George the Second*, intituled, “ An Act to
“ prevent the committing of Frauds by Bank-
“ rupts,” and be discharged from his Debts in
“ Pursuance of the said Act.”

Sworn at the Public Office, &c.

Peter Quin

The Affidavit where two Persons saw the Creditors sign.

“*Thomas Andrews of &c. and Nathaniel Owen of &c. severally make Oath as follows: and first this Deponent Thomas Andrews for himself saith, that he this Deponent did see (the Names, Places of Abode, and Additions of such Creditors as signed according to their Depositions as before,) severally subscribe their respective Names &c. (as in the above Affidavit) and this Deponent Nathaniel Owen for himself saith, that he did see [a Creditor] subscribe his Name to the said Consent.*”

Sworn, &c.

*Thomas Andrews.
Nathaniel Owen.*

The Certificate being engrossed on a treble sixpenny stamp'd Peice of Parchment, the Creditors having signed their Consent thereto, and on Affidavit of seeing them sign such Consent being made, the Commissioners must be summoned by the Messenger to meet in order to sign and seal the said Certificate; at which Meeting they also sign this *Memorandum*.

Memorandum of the Commissioners certifying the Bankrupt's Conformity.

At, &c.

“*Be it remembered, that we who have hereunto subscribed our Names, being the major Part of the Commissioners named and authorized in and by a Commission of Bankrupt, awarded and issued, and now in Prosecution, against Francis Gibbons, of &c. did meet the Day and Year, and at the*

Certificate.

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the Place abovementioned, and examined the Proceedings under the said Commission, and finding that full four Parts in five of all the Creditors who have proved Debts under the said Commission, whose respective Debts amount to twenty Pounds or upwards, have signed their Consent to our certifying to the Lord High Chancellor of Great Britain, that the said *Francis Gibbons* had conformed himself to the several Statutes made, and now in Force concerning Bankrupts, as appears by Affidavit exhibited before us; we thereupon signed such Certificate.”

Champion Bransil.

Richard Wood.

Thomas Life.

The Certificate, together with the Affidavit, and also Letters of Attorney, (if any such there be) must be lodged with the Secretary of Bankrupts, who will thereupon give the Messenger an Authority to the Printer of the *Gazette*, to insert an Advertizement therein, signifying that “the acting Commissioners have certified to the Great Seal, that the Bankrupt hath conformed, and that the Certificate will be allowed and confirmed, unless Cause shewn to the contrary, within twenty-one Days from the Date of the said Advertizement.”

In the mean Time the Bankrupt must make an Affidavit to the following Effect.

Bankrupt's Affidavit of having obtained his Creditor's Consent to the Commissioners, their certifying his Conformity, fairly and without Fraud.

In Chancery.

In the Matter of
Francis Gibbons,
Bankrupt.

“*Francis Gibbons* of &c. the Person against whom
“a Commission of Bankrupt is awarded and
“issued.”

The Affidavit where two Persons saw the Creditors sign.

“*Thomas Andrews* of &c. and *Nathaniel Owen* of &c. severally make Oath as follows: and first this Deponent *Thomas Andrews* for himself saith, that he this Deponent did see (*the Names, Places of Abode, and Additions of such Creditors as signed according to their Depositions as before,*) severally subscribe their respective Names &c. (as in the above Affidavit) and this Deponent *Nathaniel Owen* for himself saith, that he did see [*a Creditor*] subscribe his Name to the said Consent.”

Sworn, &c.

*Thomas Andrews.
Nathaniel Owen.*

The Certificate being engrossed on a treble sixpenny stamp'd Peice of Parchment, the Creditors having signed their Consent thereto, and on Affidavit of seeing them sign such Consent being made, the Commissioners must be summoned by the Messenger to meet in order to sign and seal the said Certificate; at which Meeting they also sign this *Memorandum*.

Memorandum of the Commissioners certifying the Bankrupt's Conformity.

At, &c.

“*Be it remembered*, that we who have hereunto subscribed our Names, being the major Part of the Commissioners named and authorized in and by a Commission of Bankrupt, awarded and issued, and now in Prosecution, against *Francis Gibbons*, of &c. did meet the Day and Year, and at the

the Place abovementioned, and examined the Proceedings under the said Commission, and finding that full four Parts in five of all the Creditors who have proved Debts under the said Commission, whose respective Debts amount to twenty Pounds or upwards, have signed their Consent to our certifying to the Lord High Chancellor of Great Britain, that the said *Francis Gibbons* had conformed himself to the several Statutes made, and now in Force concerning Bankrupts, as appears by Affidavit exhibited before us; we thereupon signed such Certificate.”

Champion Branfil.

Richard Wood.

Thomas Life.

The Certificate, together with the Affidavit, and also Letters of Attorney, (if any such there be) must be lodged with the Secretary of Bankrupts, who will thereupon give the Messenger an Authority to the Printer of the *Gazette*, to insert an Advertizement therein, signifying that “the acting Commissioners have certified to the Great Seal, that the Bankrupt hath conformed, and that the Certificate will be allowed and confirmed, unless Cause shewn to the contrary, within twenty-one Days from the Date of the said Advertizement.”

In the mean Time the Bankrupt must make an Affidavit to the following Effect.

Bankrupt's Affidavit of having obtained his Creditor's Consent to the Commissioners, their certifying his Conformity, fairly and without Fraud.

In Chancery.

In the Matter of
Francis Gibbons,
Bankrupt.

“*Francis Gibbons* of &c. the Person against whom
“a Commission of Bankrupt is awarded and

S S

“issued,

“ issued, and now in Prosecution, MAKETH
 “ OATH, that the Certificate bearing Date the
 “ Day of 1767, under the Hands
 “ and Seals of *Champion Branfil*, Esquire, *Richard*
 “ *Wood*, and *Thomas Life*, Gentlemen, whereby
 “ they have certified to the Right Honourable
 “ *Charles Lord Camden*, Baron of *Camden Place*,
 “ in the County of *Kent*, Lord High Chancellor
 “ of *Great Britain*, that he this Deponent hath
 “ in all Things conformed himself according to
 “ the Directions of an Act of Parliament made
 “ and passed in the *fifth* Year of the Reign of his
 “ late Majesty King *George the Second*, intituled,
 “ An Act to prevent the committing of Frauds
 “ by Bankrupts,” and the Consent of all this De-
 “ ponent’s Creditors, who have set their Names
 “ or Marks at the Foot of the said Certificate,
 “ that the said Commissioners may sign and seal
 “ the same, and that this Deponent may have
 “ such Allowance and Benefit as are given to
 “ Bankrupts by the said Act, and be discharged in
 “ Pursuance thereof, was obtained fairly and
 “ without Fraud.”

Sworn at the Public Office, &c. *Francis Gibbons.*

This Affidavit being laid before the Great Seal, and no Cause shewn within the said twenty-one Days against the Allowance of the Certificate, the Lord Chancellor will allow the same, by the following Subscription on the said Certificate;

Day of 1767.

“ Whereas the usual Notice hath been given in the *London Gazette*, of the Day of last, and none of the Creditors of the above named *Francis Gibbons* have shewn any Cause to the contrary: I do allow and confirm this Certificate.”

Camden C.

Assignees.

As the Assignees may find it necessary to call the Creditors together, in order to enable them to make a speedier Dividend of the Bankrupt's Estate, the Advertizement and Authority in Pursuance thereof shall be our next Precedents.

The Advertizement.

"The Creditors who have proved their Debts under a Commission of Bankrupt awarded and issued against *Francis Gibbons* of, &c. are desired to meet the Assignees of the said Bankrupt's Estate on the Day of next at of the Clock in the at in order to assent to, or dissent from, the said Assignees commencing, prosecuting, or defending any Suit or (w) Suits at (x) Law or in Equity, for Recovery of any Part of the said Bankrupt's Estate and Effects; and also to their compounding, submitting to Arbitration, or otherwise agreeing, any Matter or Thing relating thereto, and on other special Affairs."

The above Advertizement is by Virtue of Stat. 5 Geo. 2. c. 30. S. 34. 35. 38. and Lord (y) *Hardwicke* said, that there was no Color to say, that where only four Creditors were present at a Meeting, to consider whether they should carry on a Suit against a Debtor to the Bankrupt's Estate, that they could give the Assignees a general Power by Writing signed for that Purpose, to

(w) See next Folio.

(x) 2 *Black. Com.* 486.

(y) *Atk. Rep.* 91. pl. 39.

prosecute such Suits, as they in their Discretion should think fit, by Virtue of Stat. 5 Geo. 2. c. 30. S. 38. but that the Assignees must have a Meeting of Creditors, upon Notice given for that Purpose in the *London Gazette*, to consider of each particular Suit, or each particular Case for Arbitration, before they can proceed in them.

Lord (z) *Hardwicke* said, that though the Acts of Parliament relating to Bankrupts did only direct the Assignees to advertise a Meeting of Creditors in Relation to commencing Suits, and for particular Purposes, yet the Assignees were very much to be commended for advertising Meetings upon any other extraordinary Occasion that concerned the Creditors, because where they were numerous, there was no Way so good to collect the whole Body together.

Lord (a) *Hardwicke* said, that where Assignees give Notice pursuant to the above Statute of 5 Geo. 2. that there would be a Meeting of the Creditors, in order to accept of a Composition, that they had done every Thing which the Act of Parliament prescribed on Meetings for Compositions of Debts, and that if some of the Creditors did not think proper to come, it was their own Faults, and that those who were present had a Right to bind the whole, if the Majority in Value at the Meeting were of Opinion to sign the Composition.

(z) *Atk. Rep.* 253.

(a) *Atk. Rep.* 107.

Memorandum of the Meeting of the Creditors,

At, &c.

“ BE IT REMEMBERED, that we whose Names are hereunto subscribed being the mojour Part in Value of the Creditors who have proved our Debts under the Commission of Bankrupt awarded and issued against *Francis Gibbons*, present at the Place and Time abovementioned, pursuant to an Advertizement in the *London Gazette* of the Day of last “ in order to assent to, or “ dissent from the Assignees chosen under the “ said Commission, their commencing, prosecuting or defending any Suit or Suits at Law or in “ Equity, for Recovery of any Part of the said “ Bankrupt’s Estate or Effects, and also to their “ compounding, submitting to Arbitration or “ otherwise agreeing to any Matter or Thing relating thereto, and on other special Affairs;” and also pursuant to the Statute in such Case lately made and provided, do consent and agree that the Assignees under the said Commission shall [*here set out what Resolutions the Creditors come to, and what Directions they give the Assignees.*”]

Sales (b) before the Commissioners.

As the Estates of Bankrupts are frequently sold before the Commissioners, the Solicitor may expect to find some Precedents on that Occasion, the most useful of which seem to be the following ones.

(b) See fol. 189. 190.

Advertizement

Advertisement for the London Gazette.

“ To be sold by Auction, before the major Part of the Commissioners named and authorized in and by a Commission of Bankrupt awarded and issued, and now in Prosecution, against *Francis Gibbons* of, &c. at the *Guildhall* of the City of *London*, on *Thursday* the Day of *July* next, between the Hours of 4 and 6 o’Clock in the Afternoon (*Here set out a Description of the Premises intended to be sold.*) For further Particulars inquire of [*the Clerk to the Commission.*”]

On the Day of Sale, having given each of the Commissioners a Particular and Conditions (c) of Sale, they proceed, as is usual in such Cases, five Minutes is allowed for bidding on each Lot, and whenever a Person bids, he must sign his Bidding if required; when the Sale is over, a *Memorandum* thereof is signed by the Commissioners.

Memorandum on Sale of an Estate before the Commissioners.

At, &c.

“ *Memorandum*, that we, whose Names are hereunto subscribed, being the major Part of the Commissioners, named and authorized, in and by a Commission of Bankrupt, awarded and issued, and now in Prosecution against *Francis Gibbons* of, &c. met the Day and Year, and at the Place abovesaid, pursuant to Notice in the *London Gazette*, for Sale of the said Bankrupt’s real Estate, consisting of (*Here set out a particu-*

(c) In these Conditions, the Commissioners stand for the Auctioneer, and the Assignees for the Owner of the Estate,

“ lar

Sales before the Commissioners. 399

“lar Description of what is intended to be sold, according to the Advertizement.”)

“Memorandum, the above Estate was put up to Sale at the Sum of when John Dalrymple of London Merchant, bid the Sum of for the said Estate, and no Person, (tho’ there were several Bidders,) bidding more for the same, we declare the said John Dalrymple Purchaser of the said Estate, at the said Sum of ”
Thomas Nugent.
Richard Wood.
Thomas Life.

If there should happen to be no Bidder, the Commissioners will sign the following Memorandum.

“Memorandum, that the above Estate was put up to Sale at the Sum of and we the said Commissioners attended from the Hours of four o’Clock to six in the Afternoon, and no Bidders appearing to bid for the same, the Bidding was thereupon dismissed.”
Thomas Nugent.
Richard Wood.
Thomas Life.

Joint and separate Debts.

As the Court of Chancery hath (d) declared, that the Commissioners have no Power of admitting separate Creditors, to prove Debts under a joint Commission, without the Sanction of the Great Seal, we will here lay before the Reader the proper Petition, when such Application is necessary.

(d) *Atk. Rep.* 68. pl. 23.

“ In the Matter of To the Right Honourable
Francis Gibbons, *Charles Lord Camden, &c.*
 and *Adam Pierce,* Lord High Chancellor of
 Bankrupts. *Great Britain.*

“ The humble Petition of *Humphrey Parflow,* of &c.
 on Behalf of himself, and the Rest of the separate Creditors of the said *Adam Pierce.*

Sheweth,

“ *That* on or about the Day of last
 a joint Commission of Bankrupt under the Great Seal of *Great Britain,* was awarded and issued against the said *Francis Gibbons* and *Adam Pierce,* of *London,* Merchants and Copartners, and they were thereupon declared Bankrupts accordingly, and their Estates and Effects, as well joint as separate, have been assigned to an Assignee or Assignees, duly chosen under the said Commission, without distinguishing or dividing the joint Effects from the respective separate Estates of the said Bankrupts.

“ *That* the said *Francis Gibbons* and *Adam Pierce,* against whom the said joint Commission was awarded and issued, were, before the Date and suing forth of the said Commission, and still are justly indebted to your Petitioner, and others, on the said Bankrupt's respective separate Accounts, in very large Sums of Money, as well for Monies lent and advanced to the said *Francis Gibbons* and *Adam Pierce,* respectively, by your Petitioner, as on other Accounts.

“ *That* the said Bankrupts, at the Time of issuing the said Commission, were respectively possessed of, or otherwise entitled unto, a very considerable personal Estate in their own Right, and your Petitioner

petitioner is advised that such separate Estates are first liable to Payment of the several and respective separate Debts of the said Bankrupts.

"That under the Circumstances of this Case, your Petitioner, and other separate Creditors of the said Bankrupts, cannot be admitted to prove their several and respective separate Debts under the said joint Commission, so as to bind the respective separate Estates of the said Bankrupts, for the Benefit of your Petitioner, and the Rest of the separate Creditors of the said Bankrupts, without your Lordship's Order for that Purpose.

"Your Petitioner therefore most humbly prays, that your Lordship would be pleased to order, that your Petitioner, and the Rest of the separate Creditors of the said Bankrupts, may be at Liberty to prove their several and respective separate Debts under the said joint Commission, and that it may be referred to the major Part of the Commissioners named and authorized in and by the said Commission, to take distinct Accounts of the separate Estates of the said Bankrupts respectively, for the Benefit of their said several and respective separate Creditors, and that the Costs of this Application, and taking such Accounts, be paid and borne out of the respective separate Estates of the said Bankrupts, or that your Lordship would make such other Order in the Premises, for the Relief of your Petitioner, as to your Lordship shall seem meet.

And your Petitioner shall ever pray, &c."

The

The following *Memorandum* speaks for itself, and seems proper in this Place.

Memorandum of an Annuitant's being admitted a Creditor pursuant to Order.

At, &c.

Thomas Nugent.

“BE IT REMEMBERED, that,
“pursuant to an Order of the
“Right Honourable *Charles Lord Camden, &c.*
“Lord High Chancellor of *Great Britain*, made
“the Day of *June 1767*, *Ezekiel Garrick*
“(appearing this Day before the major Part of
“the Commissioners named and authorized in
“and by a Commission of Bankrupt awarded and
“issued, and now in Prosecution against *Francis*
“*Gibbons, of &c.*) made his Election to come in

Richard Wood. “as a Creditor for the Value of
“the Annuity in the said Order
“mentioned, upon the separate

“Estate of the said *Francis Gibbons*; and the said
“Commissioners proceeded in the Presence of the
“said *Ezekiel Garrick* and his Solicitor, and the
“Assignees and several of the Creditors, to make
“an Estimate of the Value of the said Annuity,
“and upon hearing what was alledged on both
“Sides, and upon Consideration of the Matter,
“the said Commissioners valued the said Annuity
“at four Years Purchase, amounting to the Sum
“of 100*l.* whereupon the said *Ezekiel Garrick*

“was admitted a Creditor for
Thomas Life. “the said Sum of 100*l.* pursuant
“to the said Order.”

Ezekiel Garrick.

Dividend.

In Fol. 277. we observed on a Precedent of
“An Act of Bankruptcy, as concerted by the
“Bankrupt

“Bankrupt himself;” the same Writer gives us Occasion to make another Observation in this Place. He says, that “an Order of Dividend at the third Sitting may be looked on as an unprecedented Thing, and as never done; because the Act says, *after four Months, and within twelve Months, a Dividend shall be made, &c*” but it does not say *it shall not be made before,*” and then goes on with a strange Sort of Reasoning to shew that a Dividend may and ought to be made at the third Sitting. Lord (e) *Hardwicke* said, “that an Attempt to make the Court Judges in what Manner the Estate and Effects of a Bankrupt should be distributed *before* the Expiration of *four Months* from the Date of the Commission, *was absolutely an Attempt to change the Method chalked out by the Act, and ought to meet with the utmost Discouragement;* for that Time is given to all Creditors to come in, and if they might be hindered from coming in, before the four Months, it might be made a Trick to *cozen (f) them.*”

We presuming the Assignees not willing to make a Dividend even *after* the Expiration of *twelve Months*, from the issuing of the Commission, will here set down the Form of

Notice from Commissioners to Assignees to make a Dividend.

“You are hereby required to attend us, whose Names are hereunto subscribed, or the major Part of the Commissioners named and authorized, in and by a Commission of Bankrupt awarded and issued, and now in Prosecution,

(e) *Atk. Rep.* 107.

(f) *2 Chanc. Cas.* 191.

“against

" against *Francis Gibbons*, of &c. on the Day
 " of at the *Guildhall* of the City of *London*,
 " to shew Cause why Notice has not been given
 " by you for making a Dividend of the Estate
 " and Effects of the said Bankrupt, according to
 " the Act of Parliament in that Case made and
 " provided, which if you fail of doing, a Meet-
 " ing will be forthwith appointed by us, whose
 " Names are hereunto subscribed, or the major
 " Part of the said Commissioners in and by the
 " above Commission named and authorized, for
 " you to produce your Receipts and Payments
 " touching the same, and to make a Dividend of
 " such Part of the said Estate and Effects, as shall
 " appear to be remaining in your Hands. Dated
 " this Day of 1767.

" To *John Partridge* and *Thomas Nugent*.
 " *Charles Dennis*, Assignees of the Estate and *John Fenshaw*.
 " Effects of *Francis Gibbons*, Bankrupt." *Thomas Life*.

This Notice the Assignees are to give by the following Advertizement in the *Gazette*.

The Advertizement.

" The Commissioners named and authorized in
 " and by a Commission of Bankrupt, awarded and
 " issued, and now in Prosecution, against *Francis*
 " *Gibbons*, of &c. intend to meet on the (g)
 " Day of next, at o'Clock in the
 " noon, at *Guildhall*, *London*, in order to
 " make a Dividend of the Estate and Effects of

(g) Three Weeks Notice at least must be given.

" the

the said Bankrupt, when and where the Creditors who have not already proved their Debts under the said Commission, are hereby required to come prepared to prove the same, or they will be excluded the Benefit of the said Dividend."

Order of Dividend by Admission.

At, &c.

"BE IT REMEMBERED, that we whose Names are hereunto subscribed, being the major Part of the Commissioners named and authorized, in and by a Commission of Bankrupt, awarded and issued, and now in Prosecution, against *Francis Gibbons*, of &c. having met together the Day and Year, and at the Place above mentioned, in order to make a (b) Dividend of the Estate and Effects of the said Bankrupt, pursuant to Notice given in the *London Gazette* for that Purpose; and it being admitted by *John Partridge* and *Charles Dennis*, Assignees of the Estate and Effects of the said Bankrupt, that they now have sufficient Money in their Hands to pay all the Creditors of the said Bankrupt, who have already proved their Debts under the said Commission, 14s in the Pound for every Pound so proved under the said Commission; we do therefore, pursuant to the said Admission, and at the Desire of the Creditors, order and direct that the said Assignees do forthwith pay and divide unto and amongst all and every the Creditors of the said Bankrupt, who have proved their Debts under the said Commission, 14s in the Pound in Proportion to their several and respective Debts."

Champion Branfil.

Richard Wood.

Thomas Life.

(b) If it be for a second, further, or final Dividend, it must be so expressed.

If

If a Creditor will make an Affidavit that he hath not read the *Gazette*, he will be admitted (i) upon the common Equity of the Court of *Chancery*, so as not to disturb (k) the former Dividend, and by that Means must in the first Place, be brought up equal to the Creditors under the first Dividend, before the Commissioners can proceed to make a second.

The meaning of not disturbing a Dividend already made, is this :

Suppose a Bankrupt's Effects amount in the whole to 600*l.* clear of all Charges, and he owes 1500*l.* and 900*l.* only are proved; the Commissioners knowing of no other Debts, order a Dividend of ten Shillings in the Pound, this Dividend will amount to 450*l.* so that there will be remaining in the Assignees Hands, after Payment thereof, only 150*l.* and if afterwards other Creditors come in to the Amount in Value of 600*l.* such Creditors will loose 150*l.* because there will be but five Shillings in the Pound remaining to pay them, instead of ten Shillings, and these Creditors have no Right to disturb the former Dividend, or to oblige the other Creditors to refund any Part of the ten Shillings in the Pound, received by them on their several and respective Debts; but if on a second Dividend, it appears that the Assignees have sufficient in their Hands to pay those Creditors who have proved their Debts since the first Dividend ten Shillings in the Pound; in such Case they are to receive an equal Dividend with those Creditors who first proved their Debts, before any second or further Dividend is made to the Creditors in general.

(i) *Att. Rep.* 209.

(k) See fol. 116, 117.

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" In the Matter of
Francis Gibbons,
Bankrupt.

To the Right Honourable
the Lord High Chancellor
of Great Britain.

The humble Petition of *Robert Martin,* of, &c.

Sheweth,

" That the said *Francis Gibbons* on or about the
Day of 1767, became Bankrupt,
and a Commission of Bankrupt dated the said
Day of was awarded against him, and
he was declared Bankrupt accordingly, and *John*
Partridge, of &c. and *Charles Dennis,* of &c. were
duly chosen Assignees of his Estate and Effects.

" That there was at the Time of the Date and
suing forth of the said Commission, due to your
Petitioner from the said Bankrupt the full and
just Sum of 200*l.* of lawful Money of Great
Britain for Principal and Interest by Virtue of a
Bond or Obligation, bearing Date the Day
of 1767 under the Hand and Seal of
the said Bankrupt, for which said Sum of 200*l.*
your Petitioner hath not, nor hath any other Per-
son or Persons for his Use, or for the Use of
any other Person or Persons, to the Knowledge or
Belief of your Petitioner, had or received any
Security or Satisfaction whatsoever, save and ex-
cept the said Bond.

" That your Petitioner having been of late very
much abroad, hath had no Opportunity of read-
ing the *Gazette,* as by Affidavit (1) annexed ap-

(1) This Affidavit must be in the common Form, and the Credi-
tor must swear that " he hath not read the *Gazette* in which any
Advertizement was inserted, to the Creditor's Belief, relative to
the Commission of Bankrupt awarded against the said *Francis*
Gibbons," or to the like Effect.

pears ;

pears; whereby your Petitioner hath neglected to prove his said Debt under the said Commission.

“ That a Dividend hath been made of the said Bankrupt’s Estate and Effects, of fourteen Shillings in the Pound.

*“ That on the Day of last, there was a Meeting of the Commissioners, in order to the making a second Dividend of the said Bankrupt’s Estate, at which Meeting your Petitioner was admitted to prove his said Debt of 200*l.* but there being several Claims undetermined, and the Assignees not being prepared to pass their Accounts, the making a second Dividend of the said Bankrupt’s Estate and Effects was adjourned to the Day of next.*

“ That your Petitioner hath by his Solicitor applied to the Assignees to be paid the Dividend of his said Debt equal with the other Creditors (who have received their Dividend of fourteen Shillings in the Pound) out of the Money that shall appear to be remaining in their Hands; but they insist that they cannot pay your Petitioner after that Rate in the Pound, on your Petitioner’s Debt.

“ Your Petitioner therefore, most humbly prays your Lordship that the Assignees of the said Bankrupt’s Estate and Effects, may pay to your Petitioner his proportionable Dividend of the said Estate and Effects, in Respect of his Debt so proved as aforesaid, equal with the Creditors already paid.

And your Petitioner shall ever pray, &c.”

Order

Order for a further Dividend.

At, &c.

“ BE IT REMEMBERED, [as before (fol. 405.) to
 “ for that Purpose,” then go on thus: And it ap-
 “ pearing to us, that by an Order of Dividend
 “ made the Day of last, the Assignees
 “ under the said Commission admitted that they
 “ then had sufficient Money in their Hands to pay
 “ all the Creditors of the said Bankrupt, who had
 “ proved their Debts under the said Commission,
 “ 14s in the Pound, for every Pound so proved
 “ under the said Commission, the said Commissi-
 “ oners did therefore, pursuant to the said Ad-
 “ mission, and at the Desire of the Creditors,
 “ order and direct that the Assignees should pay
 “ and divide unto and amongst all and every the
 “ Creditors of the said Bankrupt, who had proved
 “ their Debts under the said Commission 14s in
 “ the Pound, in Proportion to their several and
 “ respective Debts. And it being admitted, &c.
 “ [as before (fol. 505) to the End, (except the Sum
 “ divided)]”

Thomas Nugent.
 Champion Brasfil.
 Thomas Life.

Order for a final Dividend.

At, &c.

“ BE IT REMEMBERED, [as before in the
 “ Order of Dividend by Admission, and for a
 “ further Dividend] And it also further ap-
 “ pearing to us, by the Account of John Par-
 “ tridge, one of the said Assignees this Day exhi-
 “ bited to us upon Oath, (Charles Dennis, the
 T “ other

“ other Assignee, not having received or paid any
 “ Part of the said Bankrupt's Estate and Effects,
 “ as also appears to us upon the Oath of the said
 “ *Charles Dennis*) that the Sum total of the said
 “ Bankrupts Estate since got in and received by
 “ them, doth amount to the Sum of
 “ which being added to the said Sum of
 “ make together the Sum of And it
 “ also appearing to us, by the Account of the said
 “ *John Partridge*, and also by a Certificate of
 “ *Thomas Cuddon*, Esq. one of the Masters of the
 “ High Court of *Chancery*, bearing Date the Day
 “ of 17 of his having settled and
 “ taxed a Bill of Fees and Disbursements of
 “ *James Browne*, Clerk to the said Commission, at
 “ the Sum of and by another Certificate
 “ of *H. M.* Esq. another of the Masters of the
 “ said Court of *Chancery*, bearing Date the
 “ Day of 17 of his having settled
 “ and taxed another Bill of Fees and Disburse-
 “ ments of the said *James Browne*, under the said
 “ Commission, including the Costs of several
 “ Actions at Law, at the Sum of that
 “ the said *John Partridge* hath paid, laid out and
 “ expended the Sum of which being
 “ deducted from the said Sum of reduces
 “ the same to the Sum of which said Sum
 “ now remains in the Hands of the said *John*
 “ *Partridge* to be divided. And (m) it appearing
 “ to us that the Debts proved under the said Commis-
 “ sion, including the Debts that have been this Day
 “ proved to the Amount of do make
 “ together the Sum of Now we do
 “ order and direct that a Dividend of *

(m) If no Debts remain to be proved at this Sitting, then what is in *Italicks* may be omitted.

* *Viz.* the Dividend by Admission, and the further Dividend.

“ and

(n)
Adam

Dividend.

411

“ and Shillings in the Pound shall
 “ be paid to such of the said Creditors who have this
 “ Day proved their Debts, which will come to
 “ and after the Payment thereof there will remain in
 “ the Hands of the said John Partridge the Sum of
 “ And we do order and direct, that
 “ out of the Monies so remaining in the Hands of
 “ the said John Partridge as aforesaid, a further Di-
 “ vidend of in the Pound be paid to all the
 “ Bankrupt’s Creditors who have already proved
 “ their Debts and sought Relief under the said
 “ Commission in Proportion to their several Debts,
 “ which said Dividend of in the Pound
 “ amounts to the Sum of as we com-
 “ pute the same, and after the Payment thereof,
 “ there will remain in the Hands of the said John
 “ Partridge the Sum of and no more, subject to
 “ our further Order, [or which he is to retain to-
 “ wards answering future Charges, and making a
 “ further Dividend.]”

Thomas Nugent.

Champion Branfil.

Thomas Life.

Memorandum of adjourning Dividend.

At, &c.

“ Be it Remembered, that we [&c. as (n) before
 “ (fo. 405) to] in order to make a final Dividend
 “ of the joint Estate and Effects of the said Francis
 “ Gibbons and Adam Pierce, and also of their sepa-
 “ rate Estates and Effects, but John Partridge, one of
 “ the Assignees under the said Commission, being
 “ absent, we could not proceed to make such
 “ Dividend.”

Thomas Nugent.

Richard Wood.

Thomas Life.

(n) Except that you must add the Name of the other Bankrupt,
 Adam Pierce.

Dividend under a joint and separate Commission.

At, &c.

“ Whereas we, whose Names are hereunto
 “ subscribed, being the major Part of the Com-
 “ missioners named and authorized in and by a
 “ Commission of Bankrupt awarded and issued
 “ and now in Prosecution, against *Francis*
 “ *Gibbons* and *Adam Pierce*, of &c. did meet the
 “ Day and Year, and at the Place abovesaid,
 “ pursuant to Notice in the *London Gazette*, in
 “ order to make a Dividend of the joint and se-
 “ parate Estates and Effects of the said Bankrupts;
 “ and we have, in Obedience to an Order of the
 “ Right Honourable the Lord High Chancellor of
 “ *Great Britain*, taken an Account of the joint
 “ and seperate Estates and Effects of the said Bank-
 “ rupts, and it appears to us that the Total of
 “ the joint Debts proved and claimed under
 “ the said Commission, amounts to the Sum
 “ of and that the Total of the separate
 “ Debts of the said *Francis Gibbons* so proved and
 “ claimed under the said Commission, by Virtue
 “ of the said Order, amounts to the Sum of
 “ and that the Total of the seperate Debts
 “ of the said *Adam Pierce*, so proved and claimed
 “ under the said Commission, by Virtue of the
 “ said Order, amounts to the Sum of
 “ and that the clear Sum in the Hands of *John*
 “ *Partridge* and *Charles Dennis*, the Assignees of
 “ the said Bankrupt's joint Estates and Effects
 “ amounts to the Sum of and of the
 “ seperate Estate of the said *Francis Gibbons* to the
 “ Sum of and of the seperate Estate of
 “ the said *Adam Pierce*, to the Sum of

“ We

“ We do therefore order that the Sum of
 “ Part of the said Sum of be distributed
 “ and paid to the respective joint Creditors of
 “ the said Bankrupts, who have already duly
 “ proved their Debts under the said Commission,
 “ in Manner following, viz. at the Rate of 6s
 “ and 9d in the Pound to *Miles Green* in respect of
 “ a Debt of proved by him this Day,
 “ being the Amount of the former and present
 “ Dividend; and in respect of all his other Debts,
 “ after the Rate of 1s and 3d in the Pound; so
 “ that the Sum of after Payment of
 “ the said Creditors, will remain in the Hands of
 “ the said Assignees, of the said joint Estate and
 “ Effects. And we do further order that the Sum
 “ of Part of the said Sum of be
 “ distributed and paid to the respective separate
 “ Creditors of the said *Francis Gibbons*, who have
 “ duly proved their Debts under the said Commis-
 “ sion, in Pursuance of the said Order, after the
 “ Rate of eleven Shillings in the Pound, so that
 “ the Sum of after Payment of the
 “ said Dividend, will remain in the Hands of the
 “ said Assignees, of the separate Estate of the said
 “ *Francis Gibbons*. And we do further order, that
 “ the Sum of Part of the said Sum of
 “ be distributed and paid to the respective
 “ separate Creditors of the said *Adam Pierce*, who
 “ have already duly proved their Debts under the
 “ said Commission, in Pursuance of the said Order,
 “ after the Rate of three Shillings in the Pound;
 “ so that the Sum of after Payment of the
 “ said Dividend, will remain in the Hands of the
 “ said Assignees, of the separate Estate of the said
 “ *Adam Pierce*.”

Thomas Nugent.
Richard Word.
Thomas Life.

If the Assignees cannot personally attend the Commissioners on the Day by them appointed for making a Dividend, they must make an Affidavit to the following Effect, viz.

“ *John Partridge*, of &c. and *Charles Dennis*,
 “ of &c. Assignees under a joint Commission of
 “ Bankrupt awarded and issued, and now in Pro-
 “ secution against *Francis Gibbons* and *Adam Pierce*,
 “ of &c. and Copartners, make Oath. And first
 “ this Deponent *John Partridge* for himself saith,
 “ that the two Sheets of Paper hereunto annexed,
 “ and respectively signed by him this Deponent,
 “ do contain a full and true Account of all his
 “ this Deponent’s Receipts and Payments, touch-
 “ ing the Estate and Effects of the said Bankrupts,
 “ as well joint as seperate, under the said Com-
 “ mission; and this Deponent further saith, that
 “ the several Sums therein charged, to have been
 “ allowed, paid, and expended, have been really
 “ and *bonâ Fide* allowed, paid, and expended, in
 “ Manner, and for the Purposes therein mentioned.
 “ And this Deponent *Charles Dennis* for himself saith,
 “ that the Paper Writing hereunto also annexed
 “ and signed by him this Deponent, doth contain
 “ a full and true Account of all his this Depo-
 “ nent’s Receipts and Payments, touching the
 “ Estate and Effects of the said Bankrupts, as
 “ well joint as separate, under the said Commis-
 “ sion. And this Deponent further saith, that
 “ the several Sums therein charged, to have been
 “ allowed, paid and expended, have been really
 “ and *bonâ Fide* allowed, paid and expended in
 “ Manner, and for the Purposes therein men-
 “ tioned.”

Sworn, &c.

John Partridge.
Charles Dennis.

The

The Dividend being declared by the Commissioners, it will save the Assignees a great deal of Trouble in the Payment of it, if the Solicitor computes the Dividends, which (o) Computation may be intituled,

“ A List of the Debts proved under the
 “ Commission of Bankrupt against *Fran-*
 “ *cis Gibbons*, of &c. with the Amount
 “ of each Creditor’s Dividend, on the
 “ Sum of being the Sum or-
 “ dered to be divided amongst the said
 “ Creditors, after the Rate of
 “ Shillings in the Pound.”

Names of the Creditors. Debts proved. Dividends.

If any Bond, Note, or other Security was not exhibited by the Creditor, at the Time of his proving his Debt, the Assignees ought not to pay such Creditor his Dividend till such Bond, &c. be produced.

It is usual for the Assignees to give Notice of the Time and Place they intend to pay the Dividend; if it be paid by the Assignees the Solicitor signs an Authority for that Purpose to the following Effect, viz.

Gentlemen,

“ Please to pay *Mary Combes* the Sum of
 “ being her Dividend of Shillings
 “ in the Pound on her Debt of proved

(o) The Expence of computing the Dividends by the Solicitor, and preparing and copying the above List, will be allowed by the Master in the Assignees Accounts.

"under the Commission of Bankrupt against
 "Francis Gibbons, of &c."

Yours, &c.

To Messrs. Partridge and
 Dennis, said Bankrupt's
 Assignees.

James Browne.
 14 July 1767.

The Assignees, upon receiving this Authority,
 pay the Creditor, and take a Receipt in a Book
 to the following Purport, viz.

"Received this Day of July 1767, of
 "Messrs. Partridge and Dennis, Assignees of the
 "Estate and Effect of Francis Gibbons, of &c.
 "Bankrupt, the Sum of being a
 "Dividend of Shillings in the Pound, on
 "my Debt of proved under the said
 "Commission."

Mary Combes.

Inrolment:

Whereas Commissions of Bankrupt, and the
 Depositions taken before the Commissioners,
 and the Proceedings upon Commissions, are
 most commonly kept by the *Clerks or Secretaries* (p)

(p) Notwithstanding this express Declaration of the Legislature,
 it is made a Doubt of, even at this Day, under whose Controul,
 and subject to whose Order, Solicitors, and the Proceedings in
 Bankrupt Cases are. Previous to this Statute, the Court of King's
Bench declared that they could not order a Witness, who had been
 examined by the Commissioners of Bankrupt, a Copy of his De-
 position, *because it was not of a public Nature, but taken by the*
Commissioners to defend themselves. Lord Raym. 153. and we may
 ask how the Commissioners are to give a Creditor a Certificate of
 h's having proved a Debt in order for him to demand the Sight of
 a Bankrupt Prisoner; how to certify to a Judge or Justice of Peace,
 that the Party is found Bankrupt, in order to get a Warrant for
 his Apprehension; how to certify the Number and Value of Cre-
 ditor, and that Bankrupt has conformed in order that he may

" 10

to the Commissioners, and by Reason of the Death of the Clerks, &c. are many Times lost and mislaid, by Means whereof Purchasors of Premises under Commissions of Bankrupt may be disabled to make out their Right and Title to the same; and there being no certain Place where the Creditors of a Bankrupt, or any Person claiming any Estate or Interest in any Premises by or under a Commission of Bankrupt, can have Recourse to the Commission and Proceedings thereupon; and the (q) Commission, Depositions, and Proceedings, in Case they can be produced, are not at present of Record, nor can be given in Evidence; which may be of very evil Consequence to Purchasors or Persons claiming as aforesaid. Therefore upon Petition of any Person to the Great Seal, praying that the Commission, and the Depositions taken thereon, or any Part of them, and Certificates (r) allowed and confirmed, or any other

obtain his Discharge; if the Proceedings are not under the immediate Controul and Direction of the Commissioners; and indeed there is scarcely a Power or Authority given the Commissioners by the Bankrupt Statutes, that can be properly executed without the Proceedings. It seems not improper to observe in this Place that one cannot be both Clerk and Commissioner to the same Commission of Bankrupt, Sel. Chanc. Caf. 46. that a Clerk may be removed for Irregularity, Sel. Chanc. Caf. 45. and that he may be discharged by the Assignees. 7 Vin. Abr. 117. pl. 2.

(q) We always understood that every Commission under the Broad Seal was Evidence of itself.

(r) Certificates entered of Record, or true Copies duly signed and attested, shall be given in Evidence in the Courts of Record, and be without any further Proof deemed, adjudged, and taken, to be a full, and effectual Bar and Discharge of and against any Action or Suit, which shall be commenced or brought by any Creditor of the Bankrupt, for any Debt or Demand contracted, due or demandable before the issuing of the Commission, unless any Creditor of the Bankrupt shall prove that the Certificate was fraudulently obtained; in which Case Costs shall be allowed to either Party as in other common Cases. Stat. 5 Geo. 2. c. 5. S. 41. See fol. 247.

Matters or Things relating to the Commission, or the Proceedings thereupon, may be entered of Record; the Great Seal shall direct and order the Commission, Depositions, Proceedings and Certificates, or other Matters or Things to be entered of Record, and in Case of the Death of the Witnesses proving the Bankruptcy, or in Case the Commission, Depositions, Proceedings, or other Matters or Things, shall be lost or mislaid, a true Copy of the Record of the Commission, Depositions and Proceedings or other Matters or Things signed and attested as herein after mentioned, shall upon all Occasions be given in Evidence to prove such Commission, and the Bankruptcy of such Person against whom the Commission is awarded, or other Matters or Things.

To the End any Creditor or other Person may know where to search and see whether such Commission has issued, and find what Depositions have been taken by Virtue thereof, and what Proceedings have been thereupon, and whether the Bankrupt hath made Affidavit or Affirmation of having obtained his Certificate (s) fairly, and whether such Certificate is entered of Record, and all other Matters or Things shall be entered of Record in Pursuance of this Act, the Great Seal shall appoint a certain proper Place near the Inns of Court, where all and every the Matters aforesaid shall be entered of Record, where all Persons shall be at Liberty to search and see if the same are duly entered of Record, and the Great Seal shall by Writing under Hand appoint a proper (t) Person who shall by himself or a suffi-

(s) Stat. 5 Geo. 2. c. 30. S. 10.

(t) The present Register is Mr. Hackshaw, he executes his Office under the Chancery Office.

cient Deputy, to be approved by the Great Seal by Writing under Hand, enter of Record the Commission, Depositions, Proceedings and Certificates, and other Matters and Things, and have the Custody of the Entries thereof, and also appoint such Fee and Reward, to be paid to such Person for his Labor and Pains therein, as the Great Seal shall think reasonable, not exceeding what is usually paid in the like Cases; and that the Person to be appointed and his Deputy shall continue to enter of Record all and every the Matters and Things aforesaid, and to have the Custody of the same so long as he shall behave himself well in entering the same of Record, and keeping such Entries, and shall not be removed but by Order in Writing, under the Hand of the Great Seal, on good and sufficient Cause therein specified, and in Case such Person shall die or be as aforesaid removed, the Great Seal shall in Writing under Hand appoint another Person to enter the same of Record, who shall have the Custody of the Entries thereof, and shall have and receive the like Fee and Reward for his Labor and Pains (u) therein.

Petition for the Inrolment of Proceedings, under Commissions of Bankrupt.

To the Right Honourable the Lord
High Chancellor of Great Britain.

The humble Petition of *John Partridge* and *Charles Dennis*, Assignees of the Estate and Effects of *Francis Gibbons* Bankrupt.

Sheweth,

“ That on or about the Day of *May*,
“ 1767 a Commission of Bankrupt was awarded

(u) Stat. 5 Geo. 2, c. 30. S. 4th.

T 6

“ and

“ and issued against *Francis Gibbons* of &c. and
 “ your Petitioners were duly chosen Assignees
 “ of his Estate and Effects, and the major Part
 “ of the Commissioners in the said Commission
 “ named and authorized, have executed an As-
 “ signment of the personal Estate and also a
 “ Bargain and Sale of the real Estate of the said
 “ Bankrupt to your Petitioners accordingly.

“ That the said Bankrupt was seized of or in-
 “ titled unto him and his Heirs, of and in the
 “ Equity of Redemption, of a Freehold Estate
 “ in which has been sold, and in
 “ order to compleat the Sale thereof your Peti-
 “ tioners are advised that it is proper and neces-
 “ sary that several Parts of the Proceedings un-
 “ der the said Commission should be inrolled.

“ Your Petitioners therefore most hum-
 “ bly pray your Lordship that the
 “ Stile and Title of the proceedings
 “ of the Commissioners under the
 “ said Commission, the *Memorandum*
 “ of the said Commissioners, taking
 “ the usual Oath, the Deposition of
 “ the petitioning Creditor's Debt,
 “ together with the Commissioners
 “ Adjudication or Declaration of the
 “ Act of Bankruptcy of the said
 “ *Francis Gibbons*, and the *Memoran-*
 “ *dum* of the Choice of your Peti-
 “ tioners to be Assignees of the Estate
 “ and Effects of the said *Francis Gib-*
 “ *bons*, and your Petitioners accep-
 “ tance of the Trust thereof may be
 “ entered of Record pursuant to the
 “ Act of Parliament in that Case
 “ made and provided.

“ And your Petitioners shall ever pray, &c.”

Petition

Petition for the Inrolment of the Bankrupt's Certificate.

To the Right Honourable the Lord
High Chancellor of Great Britain.

The humble Petition of *Francis Gibbons* Bankrupt.
Sheweth,

“ That on or about the Day of
“ 1767, a Commission of Bankrupt issued against
“ your Petitioner whereupon he was duly de-
“ clared Bankrupt.

“ That your Petitioner has obtained his Cer-
“ tificate under the Hands and Seals of the major
“ Part of the Commissioners, acting in the Exe-
“ cution of the said Commission, whereby they
“ have certified, that your Petitioner hath in all
“ Things conformed himself to the several Acts
“ of Parliament made, and now in Force concern-
“ ing Bankrupts, and four fifths in Number and
“ Value of the Creditors of your Petitioner, who
“ proved their Debts under the said Commission
“ have signed their Names at the Foot of the said
“ Certificate, testifying their Consent that your
“ Petitioner may have such Allowance and Bene-
“ fit as are given to Bankrupts, and the same
“ Certificate hath been allowed and confirmed by
“ your Lordship.

“ That your Petitioner is desirous that his
“ said Certificate so confirmed as aforesaid may
“ be entered of Record.

“ Your Petitioner therefore most hum-
“ bly prays your Lordship that his
“ said Certificate, together with your
“ Petitioner's Affidavit of having ob-
“ tained the same fairly and without
“ Fraud may be entered of Record,
“ pursuant to the Act of Parliament
“ in that Case made and provided.

“ And your Petitioner, &c.”

As the Legislature has declared the Profession incapable of Practice, in Case they violate any of the Stamp Laws, our Purpose was here to have made the Practicer acquainted with the Duties to which Proceedings under Commissions of Bankrupt are liable; but upon considering the Subject, we found it not in our Power to give the Reader that Satisfaction; we shall therefore, instead thereof, lay before him our Reasons for not being able to give him such a necessary Information.

The Laws relating to the Stamp Duties seem to particularize the various Matters subject to and exempt therefrom; now Proceedings, Depositions, Examinations, or *Memorandums* under Commissions of Bankrupt, are neither expressly charged or discharged by those Laws; which we apprehend for the Sake of Certainty and Security, especially under Laws of such general Concernment, and so very penal in many Instances, ought to have been: but Practice totally exempts all the above Proceedings.

By these Laws all *Deeds* whatever are charged with a single half Crown Stamp; now Usage totally exempts a Warrant of Commitment by Commissioners of Bankrupts; and charges their Warrant of Seizure with only a *treble Six-penny* Stamp; as we conceive that Warrants of Commitment, and of Seizure are either *Deeds* or not *Deeds*, they therefore ought to be either not stamped at all, or stamped with a single half Crown.

Thus the Certificates of the Commissioners of Contempts; of the Party being found Bankrupt; or of a Creditor having proved his Debt under a Commission; are all by Custom totally exempted, whereas their Certificate that a Bank-

rupt

Renewed Commissions.

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rupt has conformed is as constantly engrossed on a treble Six-penny Peice of Parchment.

Renewed Commissions.

If it shall be necessary to (w) renew a Commission of Bankrupt, but half Fees shall be paid for the same.

In order to obtain such Commission, Application must be made to the *Great Seal*, by Petition to the following Effect.

“ To the Right Honourable *Charles*
“ *Lord Camden*, Baron of *Camden*
“ Place in the County of *Kent*, Lord
“ High Chancellor of *Great Britain*.

“ The humble Petition of *Charles Jones* of, &c.
“ a Creditor of *Francis Gibbons* Bankrupt.

“ Sheweth,

“ That upon Application of your Petitioner,
“ a Commission of Bankrupt dated the Day
“ of in the Year of the Reign of
“ his late Majesty King *George the Second* was
“ awarded against *Francis Gibbons* of, &c. directed
“ unto *Thomas Nugent*, *John Fenshawe*, Es-
“ quires, and to *Champion Branfil*, *Richard Wood*,
“ and *Thomas Life*, Gentlemen, whereon the said
“ *Francis Gibbons* was declared Bankrupt, and
“ several Proceedings have been thereon had.

“ That by Reason of the Death of the said
“ *Thomas Nugent*, *John Fenshawe*, and *Champion*

(w) Stat. 5 Geo. 2. c. 30. S. 45.

“ *Branfil*,

“ *Bransf.*, the said Commission cannot be further
 “ proceeded upon, without being renewed.

“ Your Petitioner therefore humbly
 “ prays your Lordship, that the said
 “ Commission may be renewed.

“ And your Petitioners shall ever pray, &c.”

This Petition is engrossed on a treble Six-penny stamped Paper, and lodged at the Secretary of Bankrupt's Office by the Solicitor, and is not annexed to the Commission.

Renewed Commission, on Death of Commissioners.

“ *George the third*, by the Grace of God of
 “ *Great Britain, France and Ireland*, King De-
 “ fender of the Faith, &c. To our Trusty and
 “ well beloved

“ Greeting, [*here recite the original Commission,*
 “ to “ Diligence and Effect;” then add] now for
 “ as much as *Charles Jones* of, &c. by his humble
 “ Petition, exhibited to our Lord High Chancel-
 “ lor of *Great Britain*, for the Reasons therein
 “ contained, prayed that the said Commission
 “ might be renewed, whereunto we graciously
 “ inclining, do by these Presents, name, assign,
 “ appoint, constitute and ordain you our special
 “ Commissioners, HEREBY giving full Power and
 “ Authority unto you, four or three of you,
 “ whereof you the said (x)
 “ and to be one, to proceed
 “ according to the Statutes, and all other Sta-
 “ tutes in Force concerning Bankrupts; not only

(x) See fol. 287. Note (g)

Renewed Commissions.

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“ concerning the said Bankrupt, his Body, Lands,
 “ Tenements, Freehold and Customary, Goods,
 “ Debts and other Things whatsoever; but also
 “ concerning all other Persons, who by Conceal-
 “ ment, Claim or otherwise, do or shall offend
 “ touching the Premises, or any Part thereof,
 “ contrary to the true Intent and Meaning of the
 “ said Statutes; AND TO DO and execute all and
 “ every Thing and Things whatsoever, as well
 “ for and towards Satisfaction and Payment of
 “ the said Creditors, as towards and for all other
 “ Intents and Purposes, according to the Ordi-
 “ nance and Provision of the same Statutes, WILL-
 “ ING and commanding you, four or three of you,
 “ whereof you the said (y)
 “ and to be one to proceed to
 “ the Execution and Accomplishment of this our
 “ Commission, according to the true Intent and
 “ Meaning of the same Statutes, with all Dili-
 “ gence and Effect, as our special Trust is in
 “ you reposed. Witness our self at *Westminster*,
 “ the Day of in the Year of
 “ our Reign.”

J. Yorke.

Superfedeas.

The petitioning Creditor may agree to super-
 sede (z) the Commission, but the other Creditors
 who were not petitioning ones, may (a) renew
 the Commission, and revoke the *Superfedeas*;
 especially if it was within four (b) Months after
 the granting the old Commission; for the old

(y) See fol. 287. Note (g)

(z) *Vern.* 209.

(a) 2 *Chanc. Cas.* 192.

(b) For that Time is given to all Creditors to come in, and if
 they might be hindred from coming in before the four Months, it
 might be made a Trick to couzen them, 2 *Chanc. Cas.* 191.

Commission

Commission (said Lord (c) *Jeffries*) cannot prejudice any other Creditor who might come in, for the Commission is expressly granted on Behalf of the petitioning Creditor and all other Creditors, and cannot be otherwise, for the petitioning Creditor is no more concerned than others who shall come in.

A new Commission (d) supercedes the old one; which may be done by the *Great Seal*, by Reason of the Miscarriage of the Commissioners; for that the Party was not a Trader; that no (e) Debt was due to the petitioning Creditor; that the Party had not committed an Act of Bankruptcy; for that the Commission was not opened, until (f) six or three (g) Months after it issued; for that the Bankrupt hath satisfied all his Creditors and they have given him a general (h) Release; or it may be superceded for many (i) other Reasons.

We will now, supposing a sufficient Ground for superceding the Commission, give the Solicitor all the necessary Precedents for that Purpose.

(c) 2 Chanc. Caf. 192.

(d) *Freem.* 270. pl. 298.

(e) See fol. 72, &c.

(f) 2 *Wil. Rep.* 545.

(g) *Sel. Caf. in Chanc.* 46.

(h) *Atk. Rep.* 145. pl. 84.

(i) As if Bankrupt pays the petitioning Creditor his whole Demand in Preference to his other Creditors, Stat. 5 Geo. 2. c. 30. S. 24.

Petition to supersede Commission.

In the Matter of
Francis Gibbons,
Bankrupt.

To the Right Honourable
Charles Lord Camden, &c.
Lord Chancellor of Great
Britain.

The humble Petition of the said *Francis Gibbons*
the Bankrupt.

Sheweth,

“ That a Commission of Bankrupt, under the
“ Great Seal of *Great Britain*, bearing Date at
“ *Westminster* the Day of *June* 1767, was
“ awarded and issued against your Petitioner,
“ upon the Petition of *Charles Jones* of, &c. which
“ Commission was directed to certain Commis-
“ sioners therein specially named and authorized,
“ the major Part of whom found and declared
“ your Petitioner Bankrupt (*k*).”

“ * That the said *Charles Jones*, the petitioning
“ Creditor is the only Creditor of your Petitioner,
“ who hath proved a Debt under the said Com-
“ mission as by the Certificate of the said Com-
“ missioners, hereunto annexed appears, and as

(*k*) If the Fact be so, you add here, “ and executed an Assign-
“ ment of your Petitioner’s Estate and Effects to *John Partridge*
“ and *Charles Dennis*, and your Petitioner hath finished his last Ex-
“ amination before the said Commissioners ;”

“ Instead of this Allegation, you may insert the following one, viz.
“ That the several Persons whose Names are hereunto subscribed,
“ are all the Creditors of your Petitioner, who have proved or
“ claimed any Debt under the said Commission, as by the Certificate
“ of the said Commissioners, hereunto annexed, appears, and as
“ all the said Creditors of your Petitioner are consenting that the
“ said Commission should be superseded, and for that Purpose have
“ signified their Consents in Writing to the Prayer of this Petition,
“ at the Foot hereof, as by Affidavit also annexed appears.”

Your Petitioner therefore, &c. [*as above.*]

“ the

" the said *Charles Jones* is consenting that the said
 " Commission should be superseded, and for that
 " Purpose hath signified his Consent in Writing
 " to the Prayer of this Petition, at the Foot here-
 " of, as by Affidavit also annexed, appears."

July 1767.
 " Filing the Cer- " Your Petitioner therefore most
 " tificate of the " humbly prays your Lord-
 " Commissioners, " ship would be pleased to
 " and the Affida- " order, that the said Com-
 " vit of *James* " mission of Bankrupt award-
 " *Brown*, be it as " ed and issued against your
 " prayed. " Petitioner as aforesaid, be
 " *Camden C.* " immediately superseded, and
 " that a Writ of *Superfedeas*
 " do forthwith issue for that
 " Purpose, at your Petitioner's
 " (1) Expence.

" And your Petitioner, as in Duty
 " bound, shall ever pray, &c."

" I (m) the above named *Charles Jones* do
 " hereby most humbly testify and declare my
 " Consent to the Prayer of this Petition, in Case
 " your Lordship shall be pleased to grant the
 " same. Witness my Hand this Day of
 " July 1767."

Charles Jones.

(1) If the Application to supersede the Commission be from the
 Misbehaviour of the petitioning Creditor, you must pray that the
Superfedeas be at his Expence.

(m) If there be more Creditors than one, you say, " We whose
 " Names are hereunder written do, &c." [as above.]

Certificate

Certificate (n) of the Commissioners to the Great Seal of the Proceedings had under the Commission, to supersede the same.

In the Matter of
Francis Gibbons,
Bankrupt.

“ To the Right Honourable
“ *Charles Lord Camden, &c.*
“ Lord High Chancellor of
“ *Great Britain.*

“ We whose Names are hereunto subscribed,
“ being the major Part of the Commissioners
“ named and authorized in and by a Commission
“ of Bankrupt, bearing Date at *Westminster*, the
“ Day of *June* 1767, awarded and issued
“ against *Francis Gibbons*, of &c. directed to us
“ *Thomas Nugent, John Fenshaw*, Esquires, and
“ *Thomas Life*, Gentleman, together with *Cham-*
“ *pion Branfil*, Esquire, and *Richard Wood*, Gen-
“ tleman, Do humbly certify to your Lordship,
“ that we the major Part of the said Commission-
“ ers on the said Day of *June*, having begun
“ to put the said Commission into Execution,
“ against the said *Francis Gibbons*, did find, that
“ the said *Francis Gibbons* did, before the Date and
“ suing forth of the said Commission, become
“ Bankrupt within the Intent and Meaning of
“ the several Statutes made, and now in Force,
“ concerning Bankrupts, some or one of them,
“ and did therefore declare the said *Francis Gibbons*
“ Bankrupt accordingly. And we the said Com-
“ missioners do further certify to your Lordship,
“ that *Charles Jones*, of &c. the petitioning Credi-
“ tor for the said Commission, is the only Creditor
“ of the said *Francis Gibbons*, who hath proved a

(n) To be engrossed on a treble six-penny stamp'd Sheet of Paper.

“ Debt

“ Debt under the said Commission. And we the
 “ said Commissioners do further humbly certify
 “ to your Lordship, that we did meet pursuant to
 “ Notice in the *London Gazette* for that Purpose
 “ on the Day of the said Month
 “ of June, for the Proof of Debts (o), and on
 “ the Day of the said Month of
 “ June, for the Choice of Assignees (p) of the
 “ said Bankrupt’s Estate and Effects, *when* (q) no
 “ other Creditor proved or claimed any Debt un-
 “ der the said Commission, at either of the said
 “ Sitings. WITNESS our Hands this Day
 “ of July, in the Year of our Lord 1767.”

Thomas Nugent.

John Fenshawe.

Thomas Life.

*Memorandum of the Commissioners signing
 the above Certificate.*

At, &c.

“ Be it remembered, that we whose Names are
 “ hereunto subscribed, being the major Part of
 “ the Commissioners named and authorized, in
 “ and by a Commission of Bankrupt awarded and
 “ issued, and now in Prosecution, against *Francis*
 “ *Gibbons*, of &c. met the Day and Year, and at
 “ the Place abovesaid, and at the Instance of

(o) “ When *John James*, *James Bentley*, *Mary Combes*, &c.
 “ proved Debts under the said Commission;” *if the Fact be so.*

(p) “ When *John Partridge*, of &c. and *Charles Dennis*, of &c.
 “ were duly chosen Assignees of the Estate and Effects of your Pe-
 “ titioner; and and and
 “ Debts under the said Commission.” *if the Fact be so.*

(q) If the Certificate be altered as in Notes, this Word “*when*”
 must be “*and*” to make it Sense.

“ *Charals*

" Charles Jones, the petitioning Creditor for the
 " said Commission, made our Certificate, and
 " thereby certified to the Right Honourable
 " Charles Lord Camden, &c. Lord High Chancellor
 " of Great Britain, that we the said Commissioners
 " had declared the said Francis Gibbons Bankrupt,
 " and that the said Charles Jones was the only
 " Creditor who had proved or claimed any Debt,
 " under the said Commission (r). Witness our
 " Hands this Day of July 1767."

Thomas Nugent.

John Fenshawe.

Thomas Life.

In the Matter of
 Francis Gibbons,
 Bankrupt.

AFFIDAVIT of seeing Creditors
 sign Consent at Foot of Peti-
 tion to supersede the Com-
 mission.

" James Browne, of &c. maketh Oath, that he
 " this Deponent did, this Day of July 1767,
 " see Charles Jones, of &c. the petitioning Creditor
 " for the Commission of Bankrupt, awarded and
 " issued against Francis Gibbons, of &c. sign his
 " Name to a Consent in Writing, subscribed to
 " the Prayer of a Petition of the said Francis Gib-
 " bons, intended to be preferred to the Right
 " Honourable Charles Lord Camden, Baron of
 " Camden Place, in the County of Kent, Lord
 " High Chancellor of Great Britain, most humbly
 " praying, that his Lordship would be pleased to
 " order that the said Commission of Bankrupt
 " might be immediately superseded, and that a
 " Writ of Superfedeas might forthwith issue for

(r) If any other Proceedings were had, you must set them forth
 as in Certificate.

" that

“ that Purpose, at the Expence of the said *Francis Gibbons*, or to that Effect. And this Depo-
 “ nent further saith, that the Name of the said
 “ *Charles Jones*, signed and subscribed to the said
 “ Consent in Writing, is of the proper Hand
 “ Writing of the said *Francis Gibbons*.”

Sworn, &c.

James Browne.

Writ (s) of Supersedeas.

“ *GEORGE* the Third, by the Grace of God,
 “ of Great Britain, France, and Ireland, King,
 “ Defender of the Faith, and so forth, To our
 “ trusty and well-beloved *Thomas Nugent, John*
 “ *Fenshaw, Champion Branfil, Esquires, Richard*
 “ *Wood, and Thomas Life, Gentlemen, Greeting:*
 “ WHEREAS we being informed that *Francis Gib-*
 “ *bons*, of &c. using and exercising the Trade of
 “ Merchandize, by Way of Bargaining, Exchange,
 “ Bartering, and Chevisance, seeking his Trade
 “ of living, by buying and selling, DID become
 “ Bankrupt, within the several Statutes made
 “ against Bankrupts, to the Intent to defraud and
 “ hinder *Charles Jones*, of &c. and others, his
 “ Creditors, of their just Debts and Duties, to
 “ them due and owing, AND we, minding the
 “ due Execution of the said several Statutes made
 “ against Bankrupts, DID, by our Commission
 “ under the Great Seal of Great Britain, bearing
 “ Date at *Westminster* the Day of
 “ in the Year of our Reign, name, as-
 “ sign, appoint, constitute and ordain you our
 “ special Commissioners, THEREBY giving full

(-) This Writ of *Supersedeas* is engrossed on Parchment, and
 stamp'd with a double 12d blue Stamp, and also with a double 6d
 red Stamp, under the blue one.

Power,

" Power and Authority unto you, four or three
 " of you, whereof you the said *Thomas Nugent*
 " and *John Fenshawe* to be one, to proceed ac-
 " cording to the said Statutes, and all other
 " Statutes in Force concerning Bankrupts, not
 " only concerning the said Bankrupt, his Body,
 " Lands, Tenements, Freehold and Customary,
 " Goods, Debts, and other Things whatsoever;
 " but also concerning all other Persons, who by
 " Concealment, Claim or otherwise, did or
 " should offend touching the Premisses, or any
 " Part thereof, contrary to the true Intent and
 " Meaning of the said Statutes, to do and exe-
 " cute all and every Thing and Things whatso-
 " ever, as well for and towards Satisfaction and
 " Payment of the said Creditors, as towards and
 " for all other Intents and Purposes; according
 " to the Ordinance and Provision of the same
 " Statutes, WILLING and commanding you, four
 " or three of you, whereof you the said *Thomas*
 " *Nugent* and *John Fenshawe* to be one, to pro-
 " ceed to the Execution and Accomplishment of
 " the said Commission, with all Diligence and
 " Effect: now, forasmuch as the said *Francis*
 " *Gibbons* the Bankrupt, by his humble Petition,
 " exhibited to our Lord High Chancellor of
 " *Great Britain*, for the Reasons therein contain-
 " ed, prayed that the said Commission might be
 " superseded; whereunto we graciously inclining,
 " do, by these Presents, will and command you,
 " and every of you, to stay and surcease all fur-
 " ther Proceedings upon the said Commission,
 " and that you supersede the same accordingly, as
 " our special Trust is in you reposed. WITNESS
 " our self at *Westminster*, the Day of
 " in the Year of our Reign."

J. Yorke.
 When

When this Writ is obtained, the Commissioners must be served therewith, by delivering to each of them a Copy, and at the same Time shewing them respectively, the original Writ under Seal, and then the Proceedings are at an End; but it is usual to give Notice thereof in the *Gazette*, by an Advertizement to the following Effect.

The Advertizement.

“Whereas a Commission of Bankrupt bearing
 “Date on or about the Day of *June 1767*,
 “was awarded and issued against *Francis Gibbons*
 “of, &c. This is to give Notice, that the said
 “Commission, is under the Great Seal of *Great*
 “*Britain*, superseded.”

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ERRATUM in *PRELATORY DISCOURSE*.
Fol. iii. Line 5. *for* and read *et*.

ERRATUM in *INTRODUCTION*.

Fol. iv. L. 21. *for* Power and Authority, read Authority and Power.

ERRATA in *SPIRIT OF BANKRUPT LAWS*.

Fol. 6. in Notes. *for* Temp. Caf. Talb. read Caf. Temp. Talb.

48. L. 3. *for* Bankruptcy read Bankruptcy, leave out the Comma after (n).

In Notes. *for* S 2 read S. 2.

61. 3. leave out *we*.

66. in Notes. *before* L. C. J. *Wi'mot* add *even*.

71. in Notes. *after* Months add that the Writ must be served personally.

In Note (m) *after* that add *even*.

After *Atk. Rep.* 139. add pl. 80.

95. 1. *for* would be read *is*.

4. *for* was read *is*

96. L. 21. *before* material add *other*.

142. in Notes. *for* a Bankrupt's Certificate read Commissioners Certificate of the Bankrupt's Conformity

160. L. 9. *for* Role read Rule

163. 4. *for* natural read usual

164. 5. *for* Divided read Dividend.

10. *for* ihey read they

25. *for* this read his

172. in Notes. *after* Assignment add and also in the Bargain and Sale.

173. 18. *for* Power and Authority read Authority and Power.

177. in Notes. *for* *Atk. Kep.* read *Atk. Rep.*

192. 8. *for* on read an

17. *for* forteori read fortiori

200. 6. *for* Times read Fines

ERRATA in *APPENDIX*.

Fol. 285. in Notes. *for* Deputee read Deputy

289. *for* Thomas Heckford read Thomas Cobb

417. in Notes. *for* a Power or Authority read an Authority or Power

421. L. 1. *for* Bankrupt's Certificate read Commissioners Certificate of the Bankrupt's Conformity.

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